IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 1778 of 2000
and
SPECIAL CIVIL APPLICATION NO. 5476 OF 2000
and
SPECIAL CIVIL APPLICATION NO. 5928 OF 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

and

Hon'ble MR.JUSTICE R.R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HALAR UTKARSH SAMITI THROUGH PRAKASH H DOSHI

Versus

STATE OF GUJARAT, THROUGH CHIEF SECRETARY

Appearance:
MR NIRUPAM NANAVATI, Sr.Counsel with MR SANDIP SINGHI, Advocate for Petitioners in SCA No.1778 of 2000.

DR MUKUL SINHA, Advocate for petitioner in SCA No.5476 of 2000.

MR SV RAJU, Advocate for petitioner in SCA No.5928 of 2000

MR BP TANNA, Sr.Counsel with MS MAHROOK N KERRAVALA, Advocate for Respondent No.1-State of Gujarat and the Chief Wildlife Warden.

MR AKSHAY H MEHTA, Sr.Central Govt.Standing Counsel for Union of India.

MR SN SHELAT, Sr.Counsel with MR GN SHAH, Advocate for Bharat Oman Refineries Ltd. (BORL)

MR HARESH J TRIVEDI, Advocate for Gujarat Pollution Control Board. (GPCB)

CORAM : MR.JUSTICE M.R.CALLA
and
MR.JUSTICE R.R.TRIPATHI

Date of decision: 13/07/2000, 18/07/2000, 20/07/2000, 27/07/2000, 03/08/2000

COMMON ORAL JUDGEMENT (per M.R. Calla, J.)

Through these three petitions, the petitioners seek to challenge the authorisation by the State Government granted vide letter No.WLP-1098-CM-41-G1 dated 4th February 2000 issued under the signatures of Shri P.Sasu, Addl. Chief Secy., Forest and Environment Deptt., Govt. of Gujarat, Gandhinagar permitting the Chief Conservator of Forest (WL) and the Chief Wildlife Warden, Gujarat State, Gandhinagar to grant permission and the permission granted by the Chief Conservator of Forest and the Chief Wildlife Warden, Govt. of Gujarat, Gandhinagar to Bharat Oman Refineries Ltd., which will be hereinafter referred to as 'BORL' for the sake of brevity, vide letter No.FCA/WLP/29/C/3180-83/99-2000 dt. 4.2.2000 issued under the signatures of Shri G.A.Patel for laying the pipeline as mentioned in the said letter.

Before we proceed further to narrate the case of the parties, it will be appropriate to mention the abbreviations which have been used in the pleadings, in judgments and various study reports with regard to the names of the Companies/Institutions/Bodies and other terms as under:

BPCL Bharat Petroleum Corporation Limited. (a wholly owned Govt. of India Company).

OOCL Oman Oil Company Limited.

"the Refinery" A refinery complex at Bina, in the State of Madhya Pradesh.

MNP Marine National Park.

MS Marine Sanctuary.

MOEF Ministry of Environment and Forest (the Central Govt.)

MOP&NG Ministry of Petroleum and Natural Gas (the Central Govt.)

SPM Single Point Mooring.

COT Crude Oil Terminal (Crude off Loading Terminal).

NIO National Institute of Oceanography.

CWLW Chief Wild Life Warden.

BORL Bharat Oman Refinery Limited.

GPCB Gujarat Pollution Control Board.

LFP Landfall Point.

IOCL Indian Oil Corporation Limited.

EMP Envionrment Management Plan.

EIA Environmental Impact Assessment

NOC No Objection Certificate

RPL Reliance Petroleum Limited.

LTL Low Tide Line.

HTL High Tide Line.

CRZ Coastal Regulation Zone.

WL(P)A Wild Life (Protection) Act, 1979.

E(P)A Environment (Protection) Act, 1986.

E(P) Rules Environment (Protection) Rules, 1986.

NEERI-Nagpur National Environmental Engineering Research Institute - Nagpur.

FCA, 1980 Forest (Conservation) Act, 1980.

CF Conservator of Forest

CCF(WL) Chief Conservator of Forest (Wild Life)

GOI Govt. of India.

GOG Govt. of Gujarat.

VLCCs Very Large Crude Carriers.

EIA Environment Impact Assessment (Appraisal)

MS Motor Spirit.

HSD High Speed Diesel.

LPG Liquified Petroleum Gas.

MMTPA Million Metric Tonnes per Annum.

MOU Memorandum of Understanding.

JVC Joint Venture Company.

JVA Joint Venture Agreement.

ROU/ROW Right of Use/Right of Way.

GMB Gujarat Maritime Board.

KPT Kandla Port Trust

INRIMT Indian National Resource and Information Technologies.

2. In September 1992, Bharat Petroleum Corporation Ltd., one of the promoters of BORL submitted an application to the Addl. Chief Secretary, Energy and Petrochemicals, State of Gujarat, seeking approval for laying the pipeline from the Single Point Mooring (SPM) in the high sea to the Crude Oil Terminal (COT) at Vadinar and for laying cross-country crude oil pipeline and also approached the Environment and Forest Department, Govt.of Gujarat as well as Conservator of Forests, Marine National Park to identify a suitable location of the COT from environmental consideration that is away from the sensitive area from the Marine National Park and Sanctuary. On 6.5.1996, BORL submitted an application for grant of permission for laying the

petroleum/oil pipeline for the purpose of transporting crude oil and petroleum products. The said pipeline was to pass through the ecologically sensitive area which has been declared as Marine Sanctuary. In reply to the said application of Bharat Petroleum Corpn. Ltd. made in September 1992, the the Bharat Petroleum Corpn. Ltd. received approval in principle and clearance from Energy and Petrochemical Department, Gujarat and Conservator of Forest, Marine National Park, Jamnagar, as well as Forest and Environment Department during October 1992/April 1993 respectively along with the No Objection Certificate (NOC) (in principle) from Gujarat Pollution Control Board (GPCB) in May 1993 for setting up the said facilities.

3. Since the capital cost required for setting up of the refinery was huge of which a substantial portion is to be in foreign currency and one of the requirements of long term of the assurance of the supply of crude oil, the 'Government of India' and 'Sultanate of Oman' entered into a Memorandum of Understanding to which the BPCL and Oman Oil Co. Ltd. (OOCL) were also parties to form a Joint Venture Company (JVC) for implementation and operation of the oil refinery in Central India and Madhya Pradesh (M.P.) and it was further agreed that OOCL which is a Government Company of Sultanate of Oman will bring in 26% of the equity capital of the JVC. It was further agreed that foreign exchange agreement of the total cost will firstly met through equity portion of OOCL and the balance of amount of exchange will be arrived at by OOCL on behalf of the JVC at the most economical terms available. In this background and in terms of the JVC agreement signed on 23rd December 1993 between the BPCL and OOCL, a Limited Company namely, BORL was formed.

4. In December 1993, the Conservator of Forests, Marine National Park, Jamnagar, advised BPCL to carry out the preliminary survey for laying or aligning their pipeline connecting the SPM and COT along the pipeline of Indian Oil Corporation Ltd. (IOCL) and to make necessary application in prescribed format.

5. On the basis of the advice of the Conservator of Forests, Jamnagar, made in December 1993, a second application in the prescribed format was made on 20th January 1994 for laying the pipeline near that of the existing pipeline of IOCL. The Conservator of Forests, Marine National Park, Jamnagar, in turn, submitted his recommendations to the Chief Conservator of Forests-Wild Life (CCF-WL) vide his letter dated 10th February 1994 for consideration and approval.

6. Thereafter, as desired by the Govt. of Gujarat in September/November 1995, BORL agreed to shift SPM location to the TM location from its originally planned location, i.e. Kandla Port Trust waters to Gujarat Maritime Board waters, so that the Govt. of Gujarat can get the revenue from the crude oil to be imported by BORL. This change did increase the length of the pipeline between SPM and COT and the overall cost of the facilities, but considering the request of the State of Gujarat and the revenue that the State Govt. could earn as a result of this change, BORL accepted the request of the State of Gujarat and changed their proposal for laying the pipeline accordingly.

7. On account of this change, a revised (third) application was submitted by BORL in May 1996 (6th May 1996) based on the new location of the SPM in Gujarat Maritime Board waters though without any change in the COT location.

8. On receipt of the said third application dated 6th May 1996, subsequent to the shift of the SPM, the Dy. Secretary, Govt.of Gujarat, Forest and Environment Department, wrote a letter on 23rd July 1996 to the Chief Wildlife Warden advising the decision of the High Level Committee of the Govt.of Gujarat, consequent to the change of location of the SPM to Gujarat Maritime Board waters, to process/expedite the application of BORL.

9. On 16th November 1996, the Chief Wildlife Warden recommended diversion of 27.70 Hact. of forest land (including areas of Marine National Park/Sanctuary) for laying the pipeline between SPM and COT, under the Forest Conservation Act (FCA). The FCA recommendations as contained in the letter dated 11th November 1996 by CCF-WL to the Addl. Chief Secretary (Forest & Environment) (ACS-F&E), Gujarat, clearly indicated that the route for laying the pipeline was found to be prima facie acceptable.

10. On 20th August 1998, the Ministry of Environment and Forest, Govt. of India, sent a letter to the Addl. Chief Secretary, Forest and Environment, Govt. of Gujarat conveying therein that BORL should not be allowed to put its pipeline in the proposed area and in fact asked the State Govt. to advise the BORL to explore an alternate alignment which excludes the area of Gulf of Kutch which is an ecologically sensitive area. Thereafter, the concerned authority of the Govt. of Gujarat considered the alternate routes for the pipeline between the approved location of SPM (GMB waters) and the

COT. It is said that the study was made with the help of National Institute of Oceanography (NIO) and the NIO had conducted various marine Environment Impact Assessment (EIA) studies and micro level indepth field studies along the route I-A (i.e. along the existing pipeline of IOC) as well as two other routes, i.e. Route 2 and Route 2A (through the Ballarpur Creek which is located beyond the eastern edge of Narara Belt).

11. Discussions were held and correspondence transpired from time to time between the State of Gujarat, Chief Wildlife Warden, BORL and other concerned authorities and it was thought fit that laying down of the pipeline through Route 2-A may be better, considering that it avoided crossing through the Marine National Park. On 15th May 1999, in presence of the representatives of NIO and the Indian National Resource and Information Management Technologies (INRIMT), BORL requested the State of Gujarat and the Chief Wildlife Warden to give permission to lay the pipeline through Route 2A. On 4th June 1999, BORL submitted a formal application in the prescribed format for laying the pipeline through Route 2-A.

12. The said revised proposal of BORL for laying the pipeline through Route 2-A had been considered by the State of Gujarat and the Chief Wildlife Warden and thereafter, vide letter dated 29th June 1999, the State of Gujarat requested that the proposal of BORL be reexamined and an alternative route be suggested where there is no possibility of damage to the marine life, mangroves, corals habitat or where there is least possible revocable damage to the wildlife with a possibility of regenerating the corals, mangroves and other wildlife of the marine eco-system. In this very letter dated 29th June 1999, it was further stated that the proposal of BORL should include specific mitigation measures for improvement of the marine biota and overall environmental improvement in the existing marine sanctuary and national park.

13. On receipt of the said letter dated 29th June 1999, BORL once again reexamined and revised their proposed route for laying the pipeline after taking the advice of the National Institute of Oceanography (NIO). The NIO submitted its report on 9th July 1999 whereby some changes were made in the route of the pipeline, i.e. towards landward portion (through marine sanctuary and forest areas), i.e. near southern end of the Ballarpur Creek. This new route was ddesignated as Route 2A (modified), to establish its distinction from the earlier

proposal of Route 2A.

14. Subsequent to the said NIO report dated 9th July 1999, a diving operation in the Gulf of Kutch near the Narara Reef for mapping sub-tidal coals if any in the area through which the proposed Route 2A modified passes, was conducted in the presence of the officials of NIO on 26th July 1999 by Shree Venkatesh Engg. Works and after conducting such diving, the said Shree Venkatesh Engg. Works observed that, "it can be concluded that 700-800 m width between Narara Reef and Siri Reeef and thereafter in the creek, (in the centre of which the proposed line is to be routed) is devoid of any live or dead corals and has clayee bottom." Said Shree Venkatesh Engg. Works submitted its report dated 28th July 1999.

15. Thereafter a Rapid Marine EIA study for the proposed pipeline (through Route 2A modified) from SPM to COT of BORL at Vadinar was conducted by NIO and a report was submitted on 9th August 1999.

16. At this juncture, on 23rd September 1999, apprehending that the permission for laying down the pipeline as above may be granted to BORL, the petitioners in Special Civil Application No.1778 of 2000, i.e. Halar Utkarsh Samiti and its Secretary Shri Prakash H. Doshi of Jamnagar, filed Special Civil Application no. 7372 of 1999 before this Court challenging the proposal to grant the permission.

17. This Special Civil Application No. 7372 of 1999 was rejected by the Division Bench of this Court (Coram: R.K.Abichandani & D.H.Waghela, JJ.) on 10th December 1999 on the ground that the question was still under consideration before the Government, no final decision had been taken by the State Government and therefore, the petition was premature. The Court also directed the State Govt. to consider the alternate routes that may be available which would not violate the provisions of the Act and the other laws before taking the decision.

18. Thereafter, the Department of Forest and Environment Govt.of Gujarat authorised the Chief Conservator of Forests and Chief Wildlife Warden to permit BORL to lead the the crude import pipeline on 4th February 2000 and on the very same day, the Chief Conservator of Forests granted the permission to the BORL to lay the pipeline according to the modified Route 2A.

19. It is against this authorisation dt.4th Feb.2000 granted by the State Govt. and the consequential

permission dated 4th February 2000 issued by the Chief Wildlife Warden that the present Special Civil Application No.1778 of 2000 was filed in this Court on 21st March 2000. When the matter came up before the Court on 22nd March 2000, the notice returnable for 29th March 2000 was issued. It was further ordered that the question whether the interim relief as prayed for by the petitioners should be granted or not will be considered by the Court on the returnable date, but it was clarified that action upon or in pursuance of permission dated 4th February 2000 shall be subject to further orders which will be passed by the Court in the petition. On 9th May 2000, Rule was issued and made returnable on 20th June 2000 after hearing the respondents and the direction which was issued by the Court on 22nd March 2000 was continued and kept operative till the final decision of this petition.

20. While the proceedings in Special Civil Application No. 1778 of 2000 were going on as stated above, Special Civil Application No. 5476 of 2000 was filed by 'Jan Sangarsh Manch' in this Court on 12th June 2000 against the very same authorisation and permission. In this Special Civil Application No.5476 of 2000, Rule was issued on 14th June 2000. The petitioner Jan Sangharsh Manch had arrayed the Chief Minister of State of Gujarat and the Prime Minister of India as respondents nos.5 and 6, but at the time of arguments, learned Counsel for the petitioner Dr.Mukul Sinha while maintaining allegations of malafides orally sought to delete these two respondents and these two respondents were accordingly deleted from the array of the respondents on 14th June 2000 i.e. the date of the issue of Rule. This Special Civil Application was directed to be heard with Special Civil Application No.1778 of 2000 and the Rule was made returnable on 20th June 2000.

21. The arguments in both these cases commenced on 20th June 2000 and on 22nd June 2000, yet another Special Civil Application No.5928 of 2000 was filed in this Court against the very same authorisation and permission, by Shri Alpesh Y. Kogje through Mr.S.V.Raju, Advocate while the petitioner Mr.Kogje himself is a practising Advocate of this Court. This Special Civil Application was circulated on the very same day, i.e. 22nd June 2000 before us with the permission of the Honourable Chief Justice. Rule was issued on 22nd June 2000 and the same was made returnable on 29th June 2000 and it was ordered that this Special Civil Application shall also be heard along with Special Civil Applications Nos.1778 of 2000 and 5476 of 2000.

22. So far as the pleadings in these matters are concerned, we have before us the pleadings in the following forms:

I. Special Civil Application No.1778 of 2000:

i) Special Civil Application with copies of documents, in all, page nos. 1 to 84.

ii) Affidavit-in-reply dated 19th April 2000 filed on behalf of BORL with documents running from page nos. 85 to 257.

iii) Affidavit-in-reply dated 20th April 2000 filed by State of Gujarat and Chief Wildlife Warden along with documents running from page nos.258 to 284 (285).

iv) Affidavit-in-rejoinder dated 29th April 2000 filed on behalf of the petitioner (Shri Prakash H. Doshi) running from page nos.285 to 299.

v) Affidavit-in-reply dated 2nd May 2000 filed on behalf of the Union of India with documents running from page nos.300 to 308.

vi) Supplemental affidavit dated 29th June 2000 with copies of documents running from page nos.309 to 326.

II. Special Civil Application No. 5476 of 2000:

i) Special Civil Application dated 12th June 2000 with copies of the documents from page nos.1 to 49.

ii) Affidavit-in-reply dated 27th June 2000 filed on behalf of the Chief Wildlife Warden, State of Gujarat with copies of documents running from page nos.50 to 123.

iii) Affidavit-in-reply dated 29th June 2000 filed on behalf of BORL with copies of documents running from page nos.124 to 150.

iv) Copy of the newspaper report as was published in the Ahmedabad edition of the Times of India dated 25th July 1999 at page no.151 as was produced by Dr.Mukul Sinha, learned Counsel for the petitioner in this matter on 4th July 2000.

III. Special Civil Application No. 5928 of 2000:

i) Special Civil Application dated 22nd June 2000 with copies of documents from page nos.1 to 18.

ii) Affidavit-in-reply dated 27th June 2000 filed on behalf of the State of Gujarat and Wildlife Warden, along with documents running from page nos.19 to 89.

iii) Affidavit-in-reply dated 29th June 2000 filed on behalf of respondent no.4 BORL at page nos.33 to 37, which ought to have been correctly numbered as page nos.90 to 94 and these pages have been accordingly marked as Page nos.90 to 94 in this Special Civil Application.

18th July 2000:

For the purpose of arguing these cases, a general reference was made to the pleadings in the Special Civil Application No.1778 of 2000 to which we shall be making reference at appropriate places while dealing with the case of the parties in the later part of this judgment, both the sides also agreed to utilise the pleadings filed by any of the parties in any of these three matters along with the pleadings filed in each of these three matters together. At the same time, studies/reports etc. mentioned as under were also referred to:

i) A Comparative Study on Offshore Terminal and Allied Facilities for the Central India Refinery, by Engineers India Ltd., a Govt. of India Undertaking, New Delhi [April-1993].

ii) Environmental Impact Assessment of Proposed Single Point Mooring and Crude Oil Terminal Facilities of BORL near Vadinar, Gujarat, Sponsor Bharat Oman

Refineries Ltd., National Environmental Engineering Research Institute, Nehru Marg, Nagpur [November 1994].

iii) Risk Assessment of Proposed Single Point Mooring and Crude Oil Terminal Facilities of BORL near Vadinar, Gujarat, Sponsor Bharat Oman Refineries Ltd., National Environmental Engineering Research Institute, Nehru Marg, Nagpur [November 1994].

iv) Risk Assessment of Proposed Single Point Mooring Facility in GMB Water Limits and Crude Oil Terminal at Vadinar, Gujarat, Sponsor Bharat Oman Refineries Ltd., National Environmental Engineering Research Institute, Nehru Marg, Nagpur [February 1997].

v) Rapid Marine EIA for Proposed SPM and Associated Facilities of BORL at Sikka/Vadinar, Sponsored by Bharat Oman Refineries Ltd., Mumbai, by National Institute of Oceanography [February 1998].

vi) Delineation of Corridors for Pipeline Routings Through Remote Sensing Techniques at Vadinar, Jamnagar District, Gujarat, Technical Report, submitted to Bharat Oman Refineries Ltd., Mumbai by Indian Resources Information & Management Technologies Pvt.Ltd. (IN-RIMT) [1999].

vii) Final Report, Bharat Oman Refineries Ltd., Marine Environmental Study: Operation of Multiple SPMs in Environmentally Sensitive Areas, as prepared by Environmental Resources Management, London [October 1999].

24. The present Special Civil Applications are preceded by a related litigation and we find it appropriate to mention the history of such litigation which will be relevant for the purpose of considering the questions as have been raised during the course of arguments:

i) Special Civil Application No.403 of 1998 decided on 24th February 1998 by a

Division Bench of this Court (Coram: S.D.Dave & S.D.Pandit, JJ.) against Reliance Petroleum Ltd. as was filed by the Gujarat Navodaya Mandal. A copy of the decision dated 24th Februaryt 1998 rendered by the Division Bench has been annexed with the Special Civil Application No.1778 of 2000 at page nos.134 to 154 as Annexure.A1. This was a petition challenging the order passed by the Chief Wildlife Warden, State of Gujarat on 8th August 1997 in favour of the Reliance Petroleum Ltd. granting permission to lay the pipeline without the approval of the State Govt.

(ii) Against this decision of the Division Bench of this Court rendered on 24th February 1998, an Special Leave Petition No.10045 of 1998 was preferred before the Supreme Court. This SLP was decided on 11th December 1998 (page nos.187 - 188) and the copy has been annexed as Annexure.A3 with Special Civil Application No.1778 of 2000). It is clear from the order passed by the Supreme Court that during the pendency of the SLP, the Government had passed an order on 30th November 1998 authorising the Chief Wildlife Warden and in view of this order dated 30th November 1998 passed by the State of Gujarat, the SLP was dismissed, but while dismissing the SLP, it was made clear that the Supreme Court had not concluded that the judgment under challenge was correct and further that the petitioner, i.e. Gujarat Navodaya Mandal shall be entitled to challenge the order dated 30th November 1998 in appropriate proceedings. This order dated 11th December 1998 as had been passed by the Supreme Court is reproduced as under for ready reference:

"In view of the order dated 30th November 1998 of the State of Gujarat, the SLP is dismissed. It is made clear that by dismissing the SLP we have not concluded that the judgment under challenge was correct. It is

also made clear that the petitioner shall be entitled to challenge the order dated 30th November 1998 in appropriate proceedings."

(iii) Thereafter, yet another petition being Special Civil Application No.11251 of 1998 was filed in this Court by Gujarat Navodaya Mandal against the Reliance Petroleum Ltd. (page nos.155 to 186 as Annexure.A2) and yet another petition being Special Civil Application No. 11271 of 1998 had been filed by Halar Utkarsha Samiti, Jamnagar against the grant of permission and authorisation as had been granted by the State of Gujarat on 30th November 1998, and both these petitions were decided by a common judgment and order dated 12th May 1999 by the Division Bench of this Court (Coram: S.D.Dave & J.R.Vora, JJ.) with certain directions and the notice in both these petitions were discharged. The following part of the order and the directions as were issued in this case are reproduced as under:

"We therefore direct that:

(1) The industry before the actual commissioning of the project, shall get the certification from the National Institute of Oceanography (NIO), for their eligibility based upon the implementation of the special design for the transfer of the crude oil and Spillage Control System.

(2) After two weeks of the actual commissioning of the project, the technocrats of the NIO and the GPCB, shall have the inspection at the cost of the Industry, to see as to everything is working well without causing any adverse effect on ecology and environment.

(3) Both the NIO & GPCB would be entitled to make necessary recommendations / suggestions regarding the remedial measures if any required to be taken, and any such recommendations/ suggestions coming from them shall be complied with by the Industry and the compliance report shall be submitted to the NIo and the GPCB.

(4) The Chief Wildlife Warden also within a period of one month from the date of the actual commission of the project, shall visit the project and shall learn as to whether all the terms and conditions imposed in Orders granting permit are duly complied with. It would be open for him to issue appropriate orders/directions to the Industry in writing on the spot. It shall be the obligation on the part of the Industry to have a full compliance of the same and to file a written report in that respect.

(5) Finally, the Industry shall work out a formula under which there could be a joint inspection by the NIO, the GPCB and the Chief Wildlife Warden, periodically, so that the remedial measures if any to be recommended by them could be implemented.

Both the petitions shall stand disposed off with these orders. Notice in both the petitions shall stand discharged."

(iv) Against the common judgment and order dated 12th May 1999 whereby the Division Bench of this Court had decided Special Civil Application Nos.11251 of 1998 and 11271 of 1998, the matter was taken before the Supreme Court by way of

Special Leave Petitions and these SLPs were decided by the Supreme Court on 31.2.2000 with the following order:

"Upon hearing counsel the Court made the following ORDER:

Delay condoned.

Heard.

The special leave petitions are dismissed."

(v) Special Civil Application No.7372 of 1999 was then filed by Halar Utkarsha Samiti against BORL by way of Public Interest Litigation challenging the action/proposed action on the part of the respondents allowing setting up a huge pipeline through the declared Marine Sanctuary and a mandamus was sought for setting aside the decision which was about to be taken by the respondent no.1 to permit BORL to lay the pipeline as per the modified Route 2A passing through the reserved forest and Marine Sanctuary in the Gulf of Kachchh. This Special Civil Application was decided by the Division Bench (Coram: R.K. Abichandani & D.H. Waghela, JJ.) on 10th December 1999 (page nos.48 to 61 of the paper as Annexure.A4 in Special Civil Application No.1778 of 2000). Paras 14, 15, 17 and 19 of this judgment are reproduced as under:

"14. The contention on behalf of the petitioners is that there will not be any scope for the State Government to grant permission under Section 29 of the said Act because laying of pipeline will not in any manner be for the improvement of better management of wild life and therefore the exercise undertaken by the State is without jurisdiction. Under Section 29, the Chief Warden shall not grant a permit to destroy, exploit or remove any wild life unless the State Government is satisfied that it is for the improvement and better manegement of wild

life. Therefore, the nature of destruction, exploitation or removal, as the case may be, of wild life as defined in Section 2(37) of the Act is required to be considered in light of the need to improve and better manage the wild life. The Division Bench in a similar challenge has accepted the contention to the effect that instead of de-notifying the area under Section 26-A(3), if permission is granted upon minimal damage, that would amount to better management of wild life. Apart from that angle, Section 29 of the said Act does not prohibit issuance of permit if in the opinion of the State Government there is no destruction, exploitation or removal of wild life. The word 'destroy' would mean in the context to ruin completely, destroy or kill any wild life. Exploitation of wild life would mean making use of wild life to derive benefit from it. Removal of wild life would be taking off or away any wild life from the place occupied by it. Thus, the State Government has to consider whether there is such destruction, exploitation or removal of wild life involved in granting the permission. A slight damage may not amount to destruction nor would a temporary shift with a plan to restore it amount to removal. The extent of damage should be such that it amounts to destruction. All these aspects are under consideration of the State Government and it would not be appropriate for this Court to preempt such consideration before any final decision is taken in the matter.

15. As regards the contention

that de-notification can be done only by a resolution under Section 26-A(3) of the Act passed by the State Legislature, we only note the statement made on behalf of the State Government that there is no move so far for de-notifying the area under Section 26-A(3) of the Act and the matter is under consideration only under the provisions of Section 29 of the said Act.

17. The reference to the provisions of CRZ came up during the hearing because, while laying down the prohibited activities, exceptions were incorporated which included exceptions in favour of laying pipeline for the facilities of carrying oil. This would assume importance in view of Section 24 of the Environment (Protection) Act, which gives overriding effect to the provisions of that Act and the Rules or Orders made thereunder notwithstanding anything inconsistent therewith contained in any other enactment. Thus, should any order be made under the Environment (Protection) Act, that would have the effect of overriding the provisions of the said Act. It therefore follows that the consideration of the application for permit under Section 29 of the said Act by the State Government is not only open on the interpretation of the provisions of Section 29 itself, but it would also be open in view of the impact of the orders that may be made under the Environment (Protection) Act, 1986 in view of their overriding effect contemplated by Section 24 of the Environment (Protection) Act. Thus, it cannot be said that the State Government has no jurisdiction to consider the

question of grant of permit under Section 29 to respondent no.4 and therefore it could not consider the modified proposal on its merits. It is obvious that the State Government and the Central Government will have to take their decisions in consonance with the provvisions of law. There is therefore no valid ground for this Court to interject at this stage and stop consideration of the matter by the State Government on the ground of want of authority under Section 29 of the said Act.

19. The learned counsel for the State Government has made it clear more than once during the hearing that the State Government has not taken any final decision in the matter. He also stated that the State Government will consider even the other routes, such as Mundra, Balachadi, Jodia, Bed, Mungdi, Sikka and Pipavav, which were named during the hearing and then take its decision in condonance with the laws on the subject. It was also stated that the Government would be preassessing the possible damage that may be caused by the project and impose payment of compensation by the respondent no.4 company as a precondition for granting the permit if at all it is decided to grant it as per the law. It was stated on behalf of the respondent no.4 that the respondent no.4 has incurred huge expenses in respect of the proposed modified route and any change in it would involve huge expenditure and further delay that may cause the project to collapse. When no final decision is taken by the State Government, all its options are open under the law and the purpose of the

> law cannot be frustrated by any external considerations of the respondent no.4 having already incurred expenses in anticipation of the approval for the modified route suggested by them. Since no final decision is taken so far, as stated on behalf of the State Government, the State Government is directed to consider even other alternative routes that may be available which would not violate the provisions of the said Act and other laws before taking its decision in the matter. Subject to this direction, the petition is rejected. The Notice is discharged with no order as to costs."

The said petition was thus dismissed on the ground that no final decision had been taken by the State of Gujarat till that time as stated on behalf of the State Government and the State Government was also directed to consider the other alternative routes that may be available which would not violate the provisions of the said Act and other laws before taking its decision in the matter. The other routes as were mentioned in para 19 were the routes such as Mundra, Balachadi, Jodia, Bed, Mungdi, Sikka and Pipavav. Subject to the directions as above, the petition was rejected and the notice was discharged.

25. It appears that after the decision as aforesaid rendered by the Division Bench of this Court on 10th December 1999, the Govt. of Gujarat issued an order dated 4th February 2000 authorising the Chief Conservator of Forests (Wildlife) and the Chief Wildlife Warden, Govt. of Gujarat to permit the BORL to lay their crude oil import pipeline from their SPM located off the coast of Narara-Vadinar to their COT near Vadinar, along the modified Route 2A in the Siri-Ballarpur jetty creek, through the Marine Sanctuary, under the conditions nos.1 to 15 as mentioned in the body of this authorisation order issued under the signatures of the Addl. Chief Secretary, Forest and Environment Department, Govt. of Gujarat, Gandhinagar.

26. Passing of this order of authorisation dated 4th

February 2000 in favour of BORL by the State of Gujarat precipitated the filing of the present petitions in the second round of litigation by Halar Utkarsh Samiti against BORL in Special Civil Application No.1778 of 2000 and by Jan Sangharsh Manch through Special Civil Application No. 5476 of 2000 and by a practising Advocate of this Court, Mr.Alpesh Y.Kogje through Special Civil Application No.5928 of 2000.

27. Whereas the controversy involved in these matters relates to the protection of wildlife including the marine life in the Marine National Park and the protected sanctuaries as declared under the Wild Life (Protection) Act, 1972, and other related laws, it may be mentioned that the increasing awareness of the compelling need to restore the catastrophic ecological imbalances introduced by the depridations inflicted on nature by human being, the earliest law which was codified can be traced to 3rd Century Before Christ (B.C.) when Ashoka the Great, the King of Maghadha, enacted a law in the matter of preservation of wild life and environment. The first codified law in India which heralded the era of laws for wild life protection was enacted in the year 1887 by the British and was titled as the Wild Birds Protection Act, 1887 (10 of 1887). This Act enabled the then Government to frame rules prohibiting the possession or sale of any kind of specified wild birds, which were being killed or taken during the breeding season. Again, the British Government in the year 1912 passed the Wild Birds and Animals Protection Act, 1912 (8 of 1912) as the Act of 1887 proved to be inadequate for the protection of wild birds and animals. The Act of 1912 was amended in the year 1935 by the Wild Birds and Animals Protection (Amendment) Act, 1935 (27 of 1935). After Independence, the Constitutent Assembly in the draft Constitution placed "Protection of Wild Birds and Wild Animals" at entry No.20 in the State List and the State Legislature has been given power to legislate and this is how the concern for the fast depleting wild life finally aroused and the first comprehensive legislation relating to protection of wild life was passed by the Parliament and it was assented by the President of India on 9th September 1972 which is known as The Wild Life (Protection) Act, 1972. A reference may be made to the following amending Acts:

1. The Constitution (Forty-second Amendment) Act, 1976.

2. The Wild Life (Protection) (Amendment)

Act, 1982 (23 of 1982).

3. The Wild Life (Protection) (Amendment) Act, 1986 (28 of 1986).

4. The Wild Life (Protection) (Amendment) Act, 1991 (44 of 1991).

5. The Wild Life (Protection) (Amendment) Act, 1993 (26 of 1993).

The relevant Rules with regard to the wild life are as under:

1. The Wild Life (Transactions and Taxidermy) Rules, 1973.

2. The Wild Life (Stock Declaration) Central Rules, 1973.

3. The Wild Life (Protection) Licensing (Additional Matters for Consideration) Rules, 1983.

4. The Wild Life (Protection) Rules, 1995.

5. The Wild Life (Specified Plants -- Conditions for Possession by Licensee) Rules, 1995.

28. It was in 19th Century that the forest policy and management was conceived as the local communities were incapable of scientific management and that only trained and organised cadre of officers could properly manage the forests. The commercial exploitation of the vast treasures that India's forests offered for industrial use remained the motive. In this background, the Indian Forest Act, 1878 was enacted. Later on, the law relating to forests and the transit of forest produce was passed in a consolidated form as The Indian Forest Act, 1927 (16 of 1927). The amending Acts and the adaptation orders are as under:

1. The Indian Forest (Amendment) Act, 1930 (26 of 1930).

2. The Indian Forest (Amendment) Act, 1933 (3 of 1933).

3. The Government of India (Adaptation of Indian Laws) Order, 1937.

4. The Repealing and Amending Act, 1947 (2 of 1948).

5. The Indian Independence (Adaptation of Central Acts and Ordinances) Order, 1948.

6. The Adaptation of Laws Order, 1950.

7. The Adaptation of Laws (No.3) Order, 1956.

Besides these, the Forest (Conbservation) Act, 1980 and the Forest (Conservation) Rules, 1981 were also made.

29. Although the environment as such has been of great importance in our country right from the beginning and even as a part of the religious values in the form of worship of nature, i.e. Sun, Water, Fire, Trees etc. the protection and improvement of the human environment has throughout remained a major issue relating to the well being of the people and the economic development and it has been the earnest desire of the people across the world to protect the environment and with the ecological imbalances and the findings of the scientists with regard to the puncture of the Ozone Layer, the concern for environment has increased. It was in the year 1972 that the proclamation was adopted by the United Nations Conference on the Human Environment, which took place at Stockholm from 5th to 16th June 1972. The Indian delegation to this Conference at Stockholm was led by the then Premier of India, Mrs.Indira Gandhi who played a leading role. However, it was in the year 1986 that the Environment (Protection) Act, 1986 with Constitutional implications and the international background was enacted and it was an important step to achive the Directive Principles and the values which the Indian society has throughout cherished.

Through the 42nd Amendment i.e. the Constitution (Forty-second Amendment) Act, 1976, Article 48A was included in the Constitution with effect from 3.1.1977 which speaks of protection and improvement of environment and safeguarding of forests and wild life. Thus, as part of Directive Principles, it became the endeavour of the State to protect the environment and safeguard the forests and the wild life of the country. By the very

same 42nd amendment, Article 51A was also included in the Constitution for the first time, providing Fundamental Duties and thus, the citizens who were conscious of their rights under the Constitution were also informed about their Fundamental Duties and under Article 51A(g), it has been prescribed as one of the duties of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures.

After this 42nd amendment and the inclusion of Articles 48A and 51A, to give effect to these provisions, the Environment (Protection) Act, 1986 was enacted by the Parliament to provide for the protection and improvement of environment and for matters connected therewith. The Environment (Protection) Rules, 1986 were also framed and to take care of the various other aspects for protection of environment, Hazardous Wastes (Management and Handling) Rules, 1989 and Manufacture, Storage and Import of Hazardous Chemical Rules, 1989 were also framed.

The Notification under Section 3(1) and Section 3(2)(v) of the Environment (Protection) Act, 1986 inviting objections against the declaration of Coastal Regulation Zone (CRZ) and imposing restrictions on industries, operations and processes in the CRZ was published vide S.O.No. 944(E) dated 15th December 1990. Thereafter the Ministry of Environment and Forests (Deptt. of Environment, Forests and Wildlife) issued the notification dt.19th Feb.1991 u/s.3(1) and Sec.3(2)(v) of the Environment (Protection) Act, 1986 and Sec.5(3)(d) of the Environment (Protection) Rules, 1986, declaring Coastal Stretches as Coastal Regulation Zone (CRZ) and regulating activities in the CRZ. So this notification in exercise of the power conferred by Clause (d) of Sub Rule (3) of Rule 5 of the Environment (Protection) Rules, 1986 and all other powers resting in its behalf, the Central Govt. declared the Coastal Stretches of seas, bays, estuaries, creeks, rivers and backwaters which are influenced by tidal action (in the landward side) upto 500 mtrs. from the High Tide Line (HTL) and the land between the Low Tide Line (LTL) as Coastal Regulation Zone and with effect from the date of this notification, i.e. 19th February 1991, the restrictions on the setting up and expansion of industries, operations or processes etc. in the said Coastal Regulation Zone (CRZ) were imposed.

The provisions of the Indian Forests Act, 1927, Wild Life (Protection) Act, 1972, the Environment (Protection) Act, 1986 and the Rules made thereunder

clearly show that with the change of time, the Legislature knowing the pulse of the masses required compassion for life anywhere and everywhere, environmental values and in the quest to relieve constitutional goals enacted the laws as aforesaid as the creator of the laws. Once the laws are created by the Legislature, whether by Parliament or by the State, it becomes the duty of the executive to enforce the law and ultimately it becomes the duty of the judiciary as a watchdog of the Constitutional system to see that laws are not violated and if violated its long arm must reach to stop the violation. This is how the concept of trinity with regard to the creation of laws, implementation of the laws and to take care that they are faithfully and punctually followed in letter and spirit, has to be given effect to by the Legislature, Executive and the Judiciary.

20th July 2000:

30. In the background as above and in the context of the laws, Rules and notifications as above, the adjudication of the questions which are raised before us in these cases centres around the words and terms like, "National Marine Park", "Sanctuary", "Flora and Fauna", "Habitat", "Marine Life", "Wild Life" etc. There is no dispute that the authorisation order which is impugned in these cases in respect of modified Route 2A does include a part of the area of the Sanctuary within the meaning of Section 2(26) of the Wild Life (Protection) Act, 1972. The Wild Life (Protection) Act, 1972 is an Act to provide for the protection of wild animals, birds and plants and for matters connected therewith or ancillary or incidental thereto. As the very object and nomenclature of the Act shows, the Act is for the protection of wild life. The concept and theme of the protection of wild life is a fibre which runs throughout the provisions of the said Act. According to the scheme of this Act:

- Section 12 provides for the grant of permit for special purposes and accordingly it is lawful for the Chief Wildlife Warden to grant a permit for the purposes specified therein, i.e. education, scientific research, scientific management, meaning thereby the translocation of any wild animal to an alternative suitable habitat or population management of wild life without killing or poisoning or destroying any wild animals; collection of specimens for recognised zoos subject to the permission under Section 38 I

or for museums and similar institutions; and derivation, collection or preparation of snake-venom for the manufacture of life-saving drugs.

- Under Chapter IIIA of the said Act, Section 17A provides for prohibition of picking, uprooting, etc. of specified plant and Section 17B provides for grant of permit for special purposes such as education; scientific research; collection, preservation and display in a herbarium of any scientific institution; or propagation by a person or an institution approved by the Central Government in this regard.

- Chapter IV deals with sanctuaries, national parks and closed areas. Section 18 provides for declaration of sanctuary and under this provision, the State Govt. may, by notification, declare its intention to constitute any area other than an area comprised within any reserve forest or the territorial waters as a sanctuary, if it considers that such area is of adequate ecological, faunal, floral, geomorphological, natural or zoological significance, for the purpose of protecting, propagating or developing wild life or its environment. The situation and limits of such area have to be specified as nearly as possible.

- Section 26A was inserted by the Act no.44 of 1991 with effect from 2nd October 1991 and it provides for declaration of area as sanctuary. Sub-section (2) of Section 26A starts with a non-obstente clause and provides that the right of innocent passage of any vessel or boat through the territorial waters shall not be affected by the notification issued under sub-section (1) with regard to the area declared as sanctuary.

- Under sub-section (3) of Section 26A, no alteration of the boundaries of a sanctuary shall be made except on a resolution passed by the Legislature of the State.

- Section 27 provides for restriction on entry in sanctuary and it has been clearly specified under this Section as to who are to enter the sanctuary. According to this Section, (a) only a public servant on duty, a person who has been permitted by the Chief Wild Life Warden or the

authorised officer to reside within the limits of the sanctuary, (b) a person who has any right over immovable property within the limits of the sanctuary, (c) a person passing through the sanctuary along a public highway, and (d) the dependants of the person referred to in clause (a), clause (b) or clause (c) shall enter or reside in the sanctuary, except under and in accordance with the conditions of a permit granted under Section 28.

- Under sub-section (4) of Section 27, no person shall tease or molest any wild animal or litter the grounds of sanctuary.

- Section 28 provides for grant of permit granted by the Chief Wild Life Warden to enter or reside in a sanctuary for any of the purposes specified therein, i.e. investigation or study of wild life and purposes ancillary or incidental thereto; photography; scientific research; tourism; transaction of lawful business with any person residing in the sanctuary.

- Section 29 provides that no person shall destroy, exploit or remove any wild life from a sanctuary or destroy or damage the habitat of any wild animal or deprive any wild animal of its habitat within such sanctuary except under and in accordance with a permit granted by the Chief Wild Life Warden and no such permit shall be granted unless the State Government, being satisfied that such destruction, exploitation or removal of wild life from the sanctuary is necessary for the improvement and better management of wild life therein, authorises the issue of such permit.

- Section 33 provides for control of sanctuaries.

- Section 35 deals with the declaration of National Parks and Section 37 deals with the declaration of closed area.

- Section 38 provides for the power of Central Government to declare areas as sanctuaries or National Parks.

- Through Section 39 under Chapter IV, the wild animals etc. are to be treated as Government property.

The frequent reference was made during the course of arguments by the respective parties to the provisions of the Wild Life (Protection) Act, 1972 numbered as under:

Sections 2(1); 2(7); 2(8); 2(15); 2(17); 2(18); 2(21); 2(23); 2(24); 2(25); 2(26); 2(27); 2(28); 2(29); 2(33); 2(36); 2(37); 2(38); Section 18; Section 26A; Sections 27; 28; 29; 33; 35 and 37.

31. Whereas the questions raised before us relate to the protection of marine life under the provisions of Wild Life (Protection) Act, and it has to be considered as to whether the authorisation order as has been issued by the Government could have been issued or not and we have to go into the correctness, legality and propriety of such an order as has been made by the State of Gujarat, the controversy relates to the questions of interaction with the nature and these questions have assumed more importasnce because of their proportions affecting the environmental aspects coupled with the protection of the wild life in these cases, the marine life in particular. Before we refer to the questions and contentions raised on behalf of the parties and consider the challenge to the authorisation order we may discuss as to what should be the approach of the Courts in such cases with what orientation such cases are to be exmained by way of judicial review as and when such controversies are brought before the Courts.

In the case of Sachidanand Pandey v. State of West Bengal, reported in AIR 1987 SC 1109, when the controversy relating to environmental protection was raised, the Supreme Court observed in para 3 of the judgment that the industrialisation, urbanisation, explosion of population, over-exploitation of resources, depletion of traditional sources of energy and raw materials and the search for new sources of energy and raw materials, the disruption of natural ecological balances, the destruction of a multitude of animal and plant species for economic reasons and sometimes for no good reason at all, are factors which have contributed to environmental deterioration; while the scientific and technological progress of man has invested him with immense power over nature, it has also resulted in the unthinking use of the power, encroaching endlessly on nature. If man is able to transform deserts into oases, he is also leaving behind deserts in the place of oases. Ecologists are of the opinion that the most important ecological and social problem is the wide -spread

disappearance all over the world of certain species of living organisms; biologists forecast the extinction of animal and plant species on a scale that is incomparably greater than their exinction over the course of millions of years; over half the species which became extinct over the last 2000 years did so after 1900; the International Association for the Protection of Nature and Natural Resources calculates that now, on average, one species or sub-species is lost every year. It is said that approximately 1000 birds and animal species are facing extinction at present. So it is, that the environmental question has become urgent and it has to be properly understood and squarely met by man. Nature and history, it has been said, are two component parts of the environment in which we live, move and prove ourselves.

In this background when a question has been raised through these petitions, that the laying of the pipeline which is clearly not only injurious but fatal to the marine life, whether such a permission could be granted by the State Govt. and the reference in particular with stress has been made to Section 29 of the Wild Life (Protection) Act saying that in accordance with the scheme of the Act, Section 29 read with the other relevant provisions would show that no such authorisation could be granted by the State Govt. for the purpose of laying down the pipeline through the area which is a part of a protected sanctuary. When the Court is called upon to decide such a controversy, what is to be kept in view is as to what was the legislative intent, object and purpose for which the legislature conceived and enacted such an Act, whether the Government has been alive to the various considerations requiring thought and deliberation while issuing such authorisation, whether it has been conscious after taking such relevant considerations into account and in absence of any allegations of malafides, it may not be possible for the Court to interfere if such relevant considerations have been kept in view by the Government. On the other hand, if such relevant considerations are not borne in mind and any other irrelevant considerations influence the decision, the Court may interfere in order to prevent the object of the Act being defeated. Whenever such problems relating to ecology are brought before the Court, the Court is bound to bear in mind Article 48A of the Constitution, i.e. Directive Principle enjoining an obligation upon the State to endeavour to protect and improve the environment and to safeguard the forest and wildlife of the country. Similarly, Article 51A(g) which has been provided as a fundamental duty of every citizen of India provides for the protection and improvement of the natural environment

including forests, lakes, rivers and wildlife and to have compassion for living creatures. If such Directive Principles and fundamental duty are required to be given effect to as observed by the Supreme Court in para 4 of the aforesaid judgment in the case of Sachidanand Pandey (supra), the Court is not to shrug its shoulders and say that priorities (between development and environment) are a matter of policy and so it is a matter for the policy-making authority. The least that the Court may do is to examine whether appropriate considerations are borne in mind and irrelevancies are excluded. In appropriate cases, the Court may go further, but how much further must depend on the circumstances of the case. The Court may always give necessary directions without attempting to nicely balance the relevant considerations. When the question involves the nice balancing of the relevant considerations, the Court may feel justified in resigning itself to acceptance of the decision of the concerned authority. Therefore, we find that in such cases, when the problems posed before the Court while making a judicial review of the executive action, what has to be kept in view is as to whether the author of the impugned orders firstly had the authority to pass the order as has been passed and even if the authority and power was there, whether such power has been exercised only on relevant considerations or the power has been exercised for reasons which can be said to be extraneous or collateral or not germane. Simultaneously, the Court has to keep in mind the objecct of the Act and every possible effort is to be made to see that the object of the Act advances and if any decision is there which renders the provisions of the Act to be nugatory, defeats the object of the Act and thwarts the very legislative intent for which the Act was enacted, the Court in such cases have to keep the object of the Act at the higher pedestal for examining the larger questions which are raised challenging the executive order issued in exercise of the powers which are vested upon the authorities and functionaries of the State and the State itself. Therefore, the object of the Act is the supreme purpose to be kept in view while examining such cases and that is the approach and orientation with which the decision taken by the authorities and the Government has to be examined.

32. Such being the settled approach and orientation in cases of this nature, we, in the instant cases, have to examine the challenge as has been thrown to the impugned authorisation dated 4th February 2000. Whereas the arguments at considerable length have been addressed from both the sides and such arguments mainly centres

around the provisions of Section 29 of the Wild Life (Protection) Act and for that purpose, the reference and repeated reference with emphasis has been made to the earlier judgments rendered in this regard and on behalf of the respondents, it has been argued that Section 29 of the Act has already been interpreted in the earlier judgments rendered by the Division Bench to which we have already made the reference, we have to first find out as to whether Section 29 has already been interpreted by the Division Bench in the earlier judgments. So far as the first judgment, i.e. judgment dated 24th February 1998 in the case of Gujarat Navodaya Mandal v. Reliance Petroleum Ltd. is concerned, we find that in this decision the Court read Section 29 in two parts by bifurcating the same. It was observed that the later part of Section 29 is only referring to the restriction on the State Govt. that being satisfied only in case of destruction, exploitation or removal of wildlife and therefore, if Section 29 is considered as a whole, it would be quite clear that the destruction or damage to the habitat or any wild animal being deprived of its habitat could be done only with the permission granted by the Chief Wildlife Warden and that Section 29 does not say that for granting such permission, the Chief Wildlife Warden is required to obtain a permission from the State Govt. which is to be satisfied that the same is necessary for better management and improvement of wildlife and that condition is applicable only in case if there is destruction or exploitation or removal of wildlife. It was held by the Court that before laying any pipeline, a permission under Section 29 must be obtained by the person who intends to lay the pipeline through the forest areas and therefore, if the provisions of Section 29 are read carefully, they do not permit to accept the contention that the Chief Wildlife Warden has no jurisdiction to grant the permission in question. The aforesaid observations had been made by the Court because, in that case, the question under consideration was with reference to the want of authorisation by the Government under Section 29 and the permission had been issued by the Chief Wildlife Warden only. By bifurcating the Section, the Court found that the permission as had been granted by the Chief Wildlife Warden was enough and the authorisation by the Government under Section 29 was not necessary. However, we find that this decision cannot be said to be an authority on the question of interpretation of Section 29 as such or that it decided the controversy as to whether the authorisation by the Government was necessary or not and that too, by bisecting the provisions of Section 29 into two parts. We may add that when this decision was taken to the

Supreme Court by way of SLP, the SLP against the said judgment and order dt.24.2.1998 was dismissed because the authorisation dated 30th November 1998 had been issued by the Government during the pendency of the SLP and the Supreme Court made it clear on 11.12.1998 that the dismissal of the SLP was not conclusive on the question that the judgment under challenge was correct and it was also left open for the petitioners of that case to challenge the order dated 30th November 1998 which was passed during the pendency of the SLP and produced before the Supreme Court. In such a situation, the said decision cannot be said to be any authority as such on the question of interpretation of Section 29.

33. The next decision is the decision dated 12th May 1999 in Special Civil Applications nos.11251 of 1998 and 11271 of 1998, i.e. the common order after the grant of the authorisation. In these matters, the authorisation as had been issued on 30th November 1998 was under challenge and the Court did notice the contention as was urged before us that once the Marine Sanctuary or Marine National Park has been established, the corridors of the same could be permitted to be utilised for other purposes only in accordance with the provisions contained in Section 26A(3) and Section 35(5), but we find that this contention as was urged did not receive any conclusive adjudication as is clear from the later part of this judgment where the Court has observed that,

> "We have examined both the question and the answer and have put them under a serious consideration. But we feel that ordering a halt for a complete project does not appear to be the only justifiable exercise because the concern on the part of the petitioners can be recognised and can be taken care of by appropriate direction for the due protection of flora & fauna."

Not only that, the Court further observed that,

> "Amidst all these, we have our considered opinion to the effect that when everything is over and a Rs.Nineteen Thousand Crore has reached the installation finality and is well prepared to receive oil through the pipeline from SBM offload, we in the larger public interest should not interfere on the ground of non observance and/or non fulfillment of certain aspects flowing from the statutory provisions. We rather than ordering this mega project, important from the view point of the national interest also, to lie

idle, would not intercept its commission. We, on the other hand, nonetheless shall have to secure the national interest in ecology and environment. Our conclusion therefore is that we should dispose of these two petitions, but with certain directions.

We therefore direct that:-

(1) The Industry before the actual commissioning of the project, shall get the certification from the National Institute of Oceanography (NIO), for their eligibility based upon the implementation of the special design for the transfer of the crude oil and Spillage Control System.

(2) After two weeks of the actual commissioning of the project, the technocrats of the NIO and the GPCB, shall have the inspection at the cost of the Industry, to see as to everything is working well without causing any adverse effect on ecology and environment.

(3) Both the NIO & GPCB would be entitled to make necessary recommendations/suggestions regarding the remedial measures if any required to be taken, and any such recommendations/suggestions coming from them shall be complied with by the Industry and the compliance report shall be submitted to the NIO and the GPCB.

(4) The Chief Wildlife Warden, also within a period of one month from the date of the actual commission of the project, shall visit the project and shall learn as to whether all the terms and conditions imposed in Orders granting permit are duly complied with. It would be open for him to issue appropriate orders/directions to the Industry in writing on the spot. It shall be the obligation on the part of the Industry to have a full compliance of the same and to file a written report in that respect.

(5) Finally, the Industry shall work out a formula under which there could be a joint inspection by the NIO, the GPCB and the Chief Wildlife Warden, periodically, so that the remedial measures if any to be recommended by them could be implemented.

Both the petitions shall stand disposed off with these Orders. Notice in both the petitions shall stand discharged."

Thus, we find that even in this order, the pointed contention which was raised on the question of interpretation of Section 29 and which was urged specifically, though noted by the Court, was not answered, rather the Court did not find it necessary to answer the same for the reasons given in the order itself with regard to the stage at which the project had reached and the amount involved and the other allied reasons as had been mentioned that the mega project was important from the point of view of the national necessity etc. and that such mega project could not be made to lie idle by intercepting its production. Thus, we find that in this order also, there is no interpretation on the question of Section 29 that once the Marine Sanctuary or Marine National Park has been established, the corridors of the same could be permitted to be utilised for other purpose only in accordance with the provisions contained in Section 26A(3) and Section 35(5). We may at once clarify that Section 26A(3) provides for the denotifying of the area of the sanctuary and Section 35(5) deals with the denotification about the area of the National Park only on the strength of the resolution passed by the Legislative Assembly. Thus, the pointed contention was that once the Marine Sanctuary or Marine National Park had been established, by appropriate notifications under appropriate provisions of the Wild Life (Protection) Act, the corridors of such areas could not be permitted to be utilised except for the purposes mentioned in Section 29 itself and there is no question of grant of such permission or authorisation under Section 29 and such areas whether falling under sanctuary or in the national park could be made use of for other purposes only in accordance with the provisions of Section 26A(3) for the forest area or sanctuary and Section 35 for the area of the Marine National Park. Thus, even after this order, this contention as was raised on behalf of the petitioners in that case still remains open.

It may be clarified that Special Civil Applications Nos.403 of 1998 and 11251 of 1998 were the matters between Gujarat Navodaya Mandal against the Reliance Petroleum Ltd. and Special Civil Applications No. 11271 of 1998 was the matter between Halar Utkarsh Samiti, present petitioner against the Reliance Petroleum Ltd. and that none of these matters was against BORL.

21st July 2000:

34. Now comes the third judgment dated 10th December 1999 in Special Civil Application No.7372 of 1999, copy of which is annexed as Annexure.IV with Special Civil Application No.1778 of 2000 at page nos.48 to 61. This was a Special Civil Application filed by Halar Utkarsh Samiti and anr. against BORL. It is very clear from the judgment dated 10th December 1999 rendered in the said Special Civil Application that this Special Civil Application had been rejected on the ground that the same was premature and it was held in no uncertain terms on the basis of the statement made by learned Counsel for the State Govt. for more than once that the State Govt. had not taken any final decision in the matter, that the Govt. will consider the other routes such as Mundra, Balachadi, Jodia, Bed, Mungdi, Sikka and Pipavav which were pointed out during the hearing and then take a decision in accordance with law on the subject. It was then recorded that when no final decision is taken by the State Govt., all its options are open under the law and the purpose of the law cannot be frustrated by any external considerations of the respondent no.4 having already incurred expenses in anticipation of the approval for the modified route suggested by them and since no final decision is taken so far as stated on behalf of the State Govt., the State Govt. was directed to consider even the other alternative routes that may be available which would not violate the provisions of the said Act and the other laws before taking its decision in the matter and subject to such directions, the petition was rejected and the notice was discharged. It was submitted on behalf of the respondents in the cases before us that although the petition had been dismissed on the ground that it was premature and the Government had not taken any final decision, in the body of the judgment, the Court had interpreted Section 29 and Mr.Tanna appearing on behalf of the State Govt. initially even gone to the extent of saying that on the question of interpretation of Section 29, the matter was res judicata or res integra and that it was not open now for this Court in this petition to interpret Section 29 and the interpretation of Section 29 as was given by the Court in the said judgment dated 10th December 1999 has to be followed. The reference was made to the following portions of the said judgment:

"14. .....
Apart from that angle, Section 29 of the said Act does not prohibit issuance of permit if in the opinion of the State Government there is no

destruction, exploitation or removal of wild life. The word 'destroy' would mean in the context of 'ruin completely, destroy or kill any wild life'. 'Exploitation of wild life' would mean 'making use of wild life to derive benefit from it'. 'Removal of wild life' would be 'taking off or away any wild life from the place occupied by it'. Thus, the State Govt. has to order whether there is such a destruction, exploitation or removal of wild life involved, in granting the permission. The slight damage may not amount to destruction nor would a temporary shift with a plan to restore it amount to removal. The extent of damage should be such that it amounts to destruction.

However, we find that in para 14 itself, immediately after the portion which we have quoted from para 14 as above, the Court has observed that,

"All these aspects are under consideration of the State Government and it would not be appropriate for this Court to preempt such consideration before any final decision is taken in the matter."

"17. .....
Thus, it cannot be said that the State Government has no jurisdiction to consider the question of grant of permit under Section 29 to respondent no.4 and therefore it could not consider the modified proposal on its merits."

Immediately after the portion from para 17 as quoted above, the Court has observed that,

"It is obvious that the State Government and the Central Government will have to take their decisions in consonance with the provisions of law. There is therefore no valid ground for this Court to interject at this stage and stop consideration of the matter by the State Government on the ground of want of authority under Section 29 of the said Act."

35. It may be further pointed out that in para 14 of the above judgment while noting the contentions raised on behalf of the petitioners that there will not be any scope for the State Government to grant permission under Section 29 of the said Act because laying of pipeline will not in any manner be for the improvement or better

management of wild life and therefore the exercise undertaken by the State is without jurisdiction, the Court observed that under Section 29, the Chief Wildlife Warden shall not grant a permit to destroy, exploit or remove any wild life unless the State Government is satisfied that it is for the improvement and better management of wild life. Therefore, the nature of destruction, exploitation or removal, as the case may be, of wild life as defined in Section 2(37) of the Act is required to be considered in light of the need to improve and better manage the wild life and further that the Division Bench in a similar challenge has accepted the contention to the effect that instead of denotifying the area under Section 26A(3), if permission is granted upon minimal damage, that would amount to better management of wild life.

36. We have gone through this judgment dated 10th December 1999 and the portions to which the pointed reference was made on behalf of the respondents and the learned Counsel appearing on behalf of the State Govt. was at pains to submit that Section 29 stands interpreted and that the permission for laying down the pipeline could be granted under Section 29 of the Act, but we find that there is no interpretation of Section 29 as such in any part of this judgment also in the context of the contention as was raised on behalf of the petitioners in that case. No doubt, the Court has observed in para 17 that it cannot be said that the State Government has no jurisdiction to consider the question of grant of permit under Section 29 to respondent no.4, i.e. BORL, this does not mean that on the question as has been raised by the petitioners before us that Section 29 stands interpreted. The jurisdiction to consider the question of granting permission can only be said to be open in case the requirements as mentioned in Section 29 are followed and all that can be said on the basis of the observations made by the Court in the above mentioned case is that in case the Government finds that the destruction, exploitation or removal is required to be permitted and that the same is necessary for the better management of the wild life itself, the permission can be granted. However, this does not mean that the provisions of Section 29 have been examined by the Court in the said case and that the argument as was raised on behalf of the petitioners in that case with reference to Section 29 that the laying of the pipeline will not in any manner be for the improvement or better management of the wild life has been rejected. To say that the Government has jurisdiction to consider the question of permission does not mean that the Government has the jurisdiction or

authority to grant such permission even when such permission is not necessary for the better management of wild life. The effort made on behalf of the respondents to forebear this Court from examining the scope of Section 29 in the context of the arguments raised by the petitioners that no such permission could be granted for laying down the pipeline and that the laying down of the pipeline is not at all necessary for the better management of the wild life because the jurisdiction of the Government to consider such question has been held in favour of the State Government in the aforesaid judgment, in our opinion, is only an effort to catch mercury by fork. While disposing of a petition on the ground that it was premature and that everything was open for the State Government to consider including the other question of alternative routes that may be available which would not violate the provisions of the said Act and other laws before taking the decision; if certain observations have been made relating to the question of the Government's jurisdiction to consider the question of grant of permission under Section 29 does not mean that no argument with reference to the scope and interpretation of Section 29 could be raised by the petitioners in the present cases after the passing of the final orders by the State Govt. After all, the earlier Special Civil Application was dismissed on the ground of being premature, the final decision has been taken only now by the State Govt. and therefore, a party aggrieved from the final decision cannot be deprived of adjudication of the basic contention with regard to interpretation of Section 29 and merely because the earlier petition was dismissed as premature, the party cannot be silenced when it comes to challenge the final order which has been passed only now against which the present Special Civil Applications have been filed. As a matter of fact, we find that the Court did not find it necessary to go into details of the contentions and the submissions which were raised in the earlier Special Civil Application for the simple reason that the petition itself was found to be premature and no final decision had been taken by the Government and a repeated statement to that effect was made on behalf of the State Government and the same was noticed by the Court in no uncertain terms. In any case, the final order which has been passed in February 2000 now offers a fresh cause of action to the petitioners and while challenging the final order, which has given this cause of action for filing these petitions in this Court against the respondent no.4, has to be adjudicated on all the points and in our opinion, the adjudication of the contention as has been raised on behalf of the petitioners with reference to Section 29 read with other

relevant provisions of the Act and the scheme of the Act cannot be refused or denied. We are of the considered opinion that denial of the consideration and adjudication on the basis of the argument of the respondents as above would simply mean a case of non-adjudication of a point raised on behalf of the petitioners and in case we accept the contention as has been raised on behalf of the respondents in this regard, we feel that our judgment will be vulnerable on the ground of non-adjudication of the point raised by the petitioners. In the end of the said judgment dated 10th December 1999, the direction to consider even the other alternative routes that may be available which would not violate the provisions of the Act also lends support to the view which we have taken that Section 29 does not stand interpreted in the context of the contention as has been raised by the petitioners in these cases.

37. Having dealt with the scope of the three judgments and as to what has been held therein and having gone through the entire pleadings and the submissions which have been raised on behalf of the parties, we find that the following questions arise for our consideration in these cases:

(1) Whether any area which is established as Marine Sanctuary or Marine National Park under the provisions of the Act is open to be utilised for the purposes other than those prescribed under Section 29 of the Act except in accordance with Section 26A(3) and Section 35(5)?

(2) Whether the Government under Section 29 of the Act has the authority to grant permission for destruction, exploitation or removal of any wild life from the Sanctuary or destruct or damage the habitat of the wild life animal or deprive any wild life from its habitat within such Sanctuary in cases where it is not necessary for the improvement and better management of wild life therein, but somehow or the other, is likely to bring about the improvement and better management?

(3) Whether the laying of a pipeline through such Sanctuary can be said to be necessary for the improvement and better management of wild life therein?

38. While taking up the aforesaid questions which come up for our consideration, we may straightway observe that no particular provision of any Act can be considered in isolation. When it comes to the interpretation of any provision of an Act, interpretation has to be made keeping in view the entire scheme of the Act and such interpretation is to be given which is conducive to the object for which the Act has been enacted by the Legislature. The Wild Life (Protection) Act, 1972 has been created for protection of the wild life. Section 18 of the Act says that in case the State Government considers that an area is of adequate ecological, faunal, floral, geomorphological, natural or zoological significance, it may declare its intention to constitute such area (other than the area comprised for reserved forest) as a sanctuary for the purpose of protecting, propagating or developing wild life or its environment. Thus, we see that the purpose of declaration of sanctuary is to protect, propagate and develop the wild life or its environment. Thus, the purpose is not only to protect or propagate the wild life, but also its environment, that is to say the environment should be conducive for the wild life and the environment in which such wild life is living should not be affected by any such activity which may adversely affect the environment for the protection, propagation and development of the wild life. Therefore, the very creation of the sanctuary is to see that the environment in which the wild life is living is to be maintained in such a manner that the wild life does not suffer any harm or injury or any adverse affect whatsoever. Section 26A shows that even if any area is declared as a sanctuary, the right of innocent passage of any vessel or boat through the territorial waters is not to be effected and no alteration of the boundaries of a sanctuary shall be made except on a resolution passed by the Legislature of the State as contemplated by Section 26A(3). Section 27 of the Act puts restrictions on entry in the sanctuary and only limited class of persons as mentioned in Section 27 may have access to the sanctuary and the provisions with regard to restriction on entry of the limited category of the persons as mentioned therein also show that the restricted entry has been permitted only for such persons and for such purposes which are absolutely necessary and for the purposes which are in the interest of the wild life, for example, with regard to the report of death of any wild animal and to safeguard its remains, extinguish any fire, assistance to the forest officer/Chief Wildlife Warden or Police Officer demanding aid for preventing the commission of any offence against the Act or in the investigation of

any such offence and even in cases where certain types of persons are permitted to enter, the obligation has been cast that such person shall not tease or molest any wild animal or litter the grounds of sanctuary. Similarly, in Section 28, the scope for grant of permit by the Chief Wildlife Warden has been given for the purposes mentioned thereunder. Such purposes being the investigation or study of wild life, photography, scientific research, tourism, and transaction of lawful business with any person residing in the sanctuary and such permit for entry has to be issued subject to such conditions only. Section 33 provides for the control of sanctuaries and for that purpose it has been enjoined upon the Chief Wildlife Warden to control, manage, and maintain all sanctuaries and for that purpose, only activities such as construction of roads, bridges, buildings, fences or barrier gates and carrying out of such other works as may be considered necessary for the purposes of such sanctuary, to ensure security of wild animals in the sanctuary and the preservation of the sanctuary and the wild animals therein, taking such measures in the interest of wild life as may be considered necessary for the improvement of any and for regulation, control or prohibit, in keeping with the interests of wild life as may be considered necessary for the improvement thereof. Similar provisions are there with regard to National Parks as contained in Section 35, 38 etc. It is therefore, clear that the protection, propagation or development of the wild life or its environment, the improvement and better management of the wild life is the paramount consideration and such consideration must prevail over all other considerations while considering the question of grant of permission under Section 29 and unless it is found that granting of such permission is necessary for the improvement and better management of wild life therein, the authorisation cannot be issued. The words as contained in Section 29, i.e. "unless" and "necessary" and the terms "for the improvement and better management of the wild life" therein are of vital importance and the touch stone should be the causal relationship for permission to destroy, exploit or removal of wild life only if such permission is necessary for the improvement and better management of wild life therein. The necessity for the improvement and better management of the wild life is certainly to be seen as to why it is necessary to destroy, exploit or remove the wild life and these terms go as the conditions precedent and pre-requisite for grant of such permission. Thus, the permission has to be for destruction, exploitation or removal when it is found that the same is necessary for improvement and better management of wild life. In other

words, when it is found that unless the permission for destruction, exploitation or removal of the wild life is granted, it would defeat the purpose of improvement and better management of the wild life therein. This appears to be the wholesome object behind the provisions made in Section 29 read with the entire scheme of the Act and in this context the argument has been raised that in any area as soon as it has been declared as a protected sanctuary under the Act, it becomes a closed domain for any activity which is not necessary for the improvement and better management of the wild life and the permission has to be positively for destruction, exploitation or removal.

39. On the question of interpretation, the arguments were addressed on behalf of both the sides with reference to the principles of interpretation of the statutes to be applied in such cases.

(A) Dr.Mukul Sinha appearing on behalf of the petitionrs cited the following cases:

(i) State Bank of India v. Sundara Money, reported in AIR 1976 SC 1111, para 6 at page 1113. In this case, the Supreme Court has held that the Courts cannot go haywire in interpreting the provisions, ignoring the text and context.

(ii) In the case of Institute of C.A. of India v. M/s.Price Waterhouse, reported in 1997 (7) SCC 647, para 13 at page 659, it has been held that all provisions would be read together harmoniously so as to give effect to all the provisions consistent as a whole rendering no part of the provision as surplusage.

(iii) In the case of S.C. Rly. Employees Coop. v. Registrar of Coop. Societies reported in 1998 (2) SCC 580 para 5 at page 580, it has been laid down that it is a cardinal principle of construction not to brush aside words used in a statute or in a notification issued under a statute and full effect must be given to the entire words of an instrument.

(iv) In the case of Jagdish C. Patnaik v. State of Orissa reported in 1998 (4) SCC 456, para 24 at page 464, the Supreme Court has laid down that when the language used in the statute is unambiguous and on a plain grammatical meaning being given to the words in the statute, the end

result is neither arbitrary, irrational or contrary to the object of the statute, then it is the duty of the Court to give effect to the words used in the statute as the words declare the intention of the law making authority at best.

(v) In the case of Ahamed Nassar v. State of Tamil Nadu, reported in 1999 (8) SCC 474, para 37 at page 490, the Supreme Court has observed that it is well settled that whenever there are two possible interpretations of a statute, the one that subserves the objective of an enactment is to be accepted.

(B) We wanted to know as to what are the provisions with regard to marine sanctuaries in other developed countries and therefore Mr.Suresh Shelat, ld. Sr.Counsel appearing for BORL took pains and placed before us, "Public Resources Code - Divn. 20, California Coastal Act of 1976' and the 'National Marine Sanctuaries Act'. He has also made reference to the provisions under the California Coastal Act. However, on going through the provisions of these Act we have found that the object and scheme of these Acts is not of any help for the purpose of questions under consideration before us.

Mr.Suresh N. Shelat appearing for respondent no.4 has submitted that in such matters, the flexible interpretation has to be given keeping in view the principles beneficial to the society, development of the country and sustainable development and that the Court has to iron out the creases and has to give life and meaning to the provisions and such provisions have to be interpreted so as advance the purpose and object of the Act and in such matters there is no question of grammatical or literal interpretation and the Court has to give a meaning keeping in view the context in its entirety. He has placed reliance on the following decisions:

(i) JT 2000 (6) SC 281, para 19. (Balbir Kaur and anr. v. Steel Authority of India Ltd. and ors.)

(ii) AIR 2000 SC 114 (Ahmedabad Municipal Corporation and anr. v. Nilaybhai R. Thakore and anr.)

(iii) AIR 2000 SC 975 (Consumer Education and Research Society v. Union of India and ors.) para 6 and 7.

(iv) AIR 1994 SC 1775 (Directorate of Enforcement v. Deepak Mahajan and anr.) p.1783.

(v) (1986) 2 SCC 237 (M/s.Girdhari Lal and Sons v. Balbir Nath Mathur and ors.)

(vi) AIR 1968 SC 615 (Ganga Bishnu Swaika and anr. v. Calcutta Pinjrapole Society and ors.)

(vii) AIR 1997 SC 3387 (Union of India and anr. v. G. Ganayutham), para 28, p.3395.

(viii) AIR 1999 SC 393 (Raunaq International Ltd. v. I.V.R. Construction Ltd. and ors.)

(ix) 1999 (95) Company Cases, 772 (Securities and Exchange Board of India v. Alka Synthetics Ltd. and ors.)

(x) "Principles of Statutory Interpretation" by Justice G.P.Singh, Sixth Edition 1996, p.6.

27th July 2000:

The case of Balbir Kaur (supra-i) was a case for compassionate employment opportunity. The Supreme Court referred to the concept of social justice as the yardstick to the administration of justice or the legal justice and observed that as Rescopound pointed out that the greatest virtue of law is in its adaptability and flexibility and thus it would be otherwise an obligation for the law courts also to apply the law depending upon the situation since the law is made for the society and whichever is beneficial for the society, the endeavour of the law court would be to administer justice having due regard in that direction.

In the case of Ahmedabad Municipal Corporation and anr. v. Nilaybhai R. Thakore and anr. (supra-ii), the Court was concerned with the Rules relating to admission to Municipal Medical College of Ahmedabad. In para 14 of this judgment on which reliance has been placed by Mr.Shelat, the Supreme Court considered the scope of the Rule in question and found that the said Rule was only subordinate legislation and the declaration of such a Rule as ultra vires as had been done by the High Court, would cause considerable damage to the cause for which the Municipality had enacted this Rule. The Supreme Court, relying upon the oft-quoted principle recorded by Lord Denning in the case of Seaford Court

Estates Ltd. v. Asher, reported in (1949) 2 All ER 155, quoted the following passage from the said report in the case of Seaford Court Estates Ltd.:

> "When a defect appears a judge cannot simply fold his hand and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament and then he must supplement the written words so as to give 'force and life' to the intention of the Legislature. A judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, they would have straightened it out? He must then do as they would have done. A judge must not alter the material of which the Act is woven, but he can and should iron out the creases."

This statement of law made by Lord Denning has been consistently followed by the Supreme Court right from the case of M.Pentiah v. Muddala Veeramallappa, reported in AIR 1961 SC 1107 till recently in the case of S.Gopal Reddy v. State of Andhra Pradesh, reported in AIR 1996 SC 2184 at p.2188. The Supreme Court following the above Rule of interpretation and with a view to iron out the creases in the impugned Rule offending Article 14, interpreted Rule 7 which was under consideration as follows:

> "Local student means a student who has passed H.S.C./New S.S.C. examination and the qualifying examination from any of the High Schools or Colleges situated within the Ahmedabad Municipal Corporation limits and, includes a permanent resident student of Ahmedabad Municipality who acquires the above qualifications from any of the High School or College situated within Ahmedabad Urban Development Area."

In order to save the Rule from being declared invalid and keeping in view the fact that the students passing from institutions situated within the limits of Ahmedabad Municipal Corporation the definition may include such students who reside out side the municipal limits of Ahmedabad in the Area of Ahmedabad Urban Development Authority and vice-versa, the definition of Local Student was extended even to those students who acquire qualifications from the institutions situated with the Ahmedabad Urban Development Area. Thus, a meaningful interpretation was given on the principle of saving the Rule from being rendered invalid and ultra vires of

Article 14 and the fact that large number of students seek education in institutions which are just outside the declared limits of Ahmedabad Municipal Corporation, but such institutions are within the limits of the Ahmedabad Urban Development Area and they should not be deprived from the higher education in Medicine in the Medical College run by the Municipal Hospital merely because such institutions are outside the Municipal limits because such Municipal limits are practically obliterated for the purpose of education and the students living in Municipal areas do seek education in the institutions situated in Urban Development areas and vice versa. It was in this background that the Supreme Court opined in para 13 of this judgment that the remedy does not lie in striking down the impugned Rules existence of which is necessary in the larger interest of the institution as well as the populace of Ahmedabad Municipal Corporation and further that the striking down of the Rule would mean opening the doors of the institution for admission to all the eligible candidates in the country which would definitely be opposed to the very object of the establishment of the institution by a local body. The Supreme Court has complimented the Ahmedabad Municipal Corporation for providing medical education to its resident students for the last 30 years and more and has observed that it is very rarely that a local body considers it as its duty to provide higher and professional education. The principle of interpretation coupled with the duty of the Court as has been followed by the Supreme Court in this case is that the 'force and life' has to be given to the words to meet the intention of the Legislature. Therefore, this principle of interpretation and to give flexible interpretation and the duty of the Court, in our considered opinion, lies on the tenat that 'force and life' has to be given to the intention of the Legislature. Thus, while interpreting any provision, it is the intention of the Legislature which is of paramount importance and this principle has to be kept in view.

In the case of Consumer Education and Research Society (supra-iii), the Supreme Court has passed an interim order with regard to a notification dated 9th August 1995 reducing the area of wild life sanctuary under the Wild Life (Protection) Act. While passing the impugned order, in para 6, the Supreme Court has considered that the power to take a decision for reduction of the notified area is not given to the State Government but to the State Legislature. The State Legislature consists of representatives of the people and it can be presumed that those representatives know the local areas well and are also well aware of the

requirements of that area. It will not be proper to question the decision of the State Legislature in a matter of this type unless there are substantial and compelling reasons to do so. Even when it is found by the Court that the decision was taken by the State Legislature hastily and without considering all the relevant aspects it will not be prudent to invalidate its decision unless there is material to show that it will have irreversible adverse effect on the wild life and the environment. It has been further observed in para 7 that, if an attempt is made by the State Legislature and the State Government to balance the need of the environment and the need of economic development it would not be proper to apply the principles of Prohibition in such a case. In the end of para 7, it has been concluded that, it would, therefore, be proper and safest to apply the 'Principle of Protection' and the 'Principle of Polluter Pays' keeping in mind the principle of 'sustainable development' and the 'principle of Inter-generation equity'. Keeping in view the aforesaid principle, the Supreme Court gave direction as mentioned in para 9 of this judgment and the State Government has been required to submit a yearly report to the Supreme Court as regards the action taken by it, while the SLP is pending before the Supreme Court.

The case of Directorate of Enforcement (supra-iv), was a case under Foreign Exchange Regulation and Customs Act. While considering the scope and object of the language and intention of the Legislature, the Supreme Court found that Acts were passed for their ostensible purposes, vital of which being economic development of the country and augmentation of revenue and it was held that the Court can look into and sometimes may even go behind the words and enactment to give effect to Legislative intention. In para 21 of this judgment, the Supreme Court has applied the principle of proper application of the concerned law by ascertaining the purposeful meaning of the language deployed, the spirit and sense which the legislature has aimed and intended to convey and the conclusions to be drawn which are in the tenor of the law though not within the letter of the law. Thus, the conclusion has to be drawn keeping in view the tenor of the law and even in this case, the stress has been laid on the principle of interpretation to the effect that the Court can look and may even go behind the words and enactment, but only to give effect to Legislative intention. Thus to give effect to the Legislative intention is the basic principle to be applied while interpreting the entire scheme of the Act.

In the case of Girdhari Lal and Sons (supra-v), the Supreme Court has laid down that ascertainment of legislative intent is a basic rule of statutory construction. A rule of construction should be preferred which advances the purpose and object of a legislation and though a construction, according to plain language, should ordinarily be adopted, such a construction should not be adopted where it leads to anomalies, injustices or absurdities. While explaining the well known principle of interpretation of Statutes, in para 6 of this judgment, it has been said that, words are but mere vehicle of thought. They are meant to express or convey one's thoughts; generally, a person's words and thoughts are coincidental. Words which very nearly express the thoughts may be found but not words which will express precisely. It has been further observed that where different interpretations are likely to be put on words and a question arises what an individual meant when he used certain words, he may be asked to explain himself and he may do so and say that he meant one thing and not the other, but in case of Legislature, it cannot be asked to sit to resolve those difficulties and therefore, the task of interpreting the laws by finding out what the legislature meant is allotted to the Courts, where words are clear and unambiguous no question of construction may arise, that the real basis of the so-called golden rule of construction that where the words of statutes are plain and unambiguous effect must be given to them, not because there is any charm or magic in the plainness of such words but because plain words may be expected to convey plainly the intention of the legislature to others as well as judges. Intention of the legislature and not the words is paramount. Words are meant to serve and not to govern and we are not to add the tyranny of words to the other tyrannies of the world. The legislative intent is to be gathered from the statute itself in the first instance, then from the preamble, next from the Statement of Objects and Reasons, then from parliamentary debates, reports of committees and commissions which preceded the legislation and finally from all legitimate and admissible sources from where there may be light. Regard must be had to legislative history too.

This judgment, therefore, clearly is on the ground, as to how the legislative intent is to be gathered and once such an intention is gathered, it becomes the duty of the Court to give a statute a purposeful or intentional interpretation.

In the case of Ganga Bishnu Swaika (supra-vi), the Supreme Court considered a case in which a

notification issued under Section 6 of the Land Acquisition Act which did not ex facie show the Government's satisfaction. In para 10 of this judgment, it is mentioned that sub-section (1) provides that when the Government is satisfied that a particular land is needed for a public purpose or for a Company, a declaration shall be made "to that effect". The satisfaction of the Government after consideration of the report, if any, made under Section 5A is a condition precedent to a valid declaration but there was nothing in sub-section (1) which requires that such satisfaction is needed to be stated in the declaration. In the light of the provisions which were under consideration before the Supreme Court in a case under the Land Acquisition Act and noticing the fact that there was no statutory form and Section 6 did not require the declaration to be made in any particular form, it was held that mere fact that notification does not ex facie show the Government's satisfaction and the words used in the phrase, "it appears" used in the notification do not mean satisfaction, would not render the notification invalid or not in conformity with Section 6. Applying the principle as aforesaid, it was held that it is immaterial whether such satisfaction is stated or not in the notification itself.

In the case of Union of India and anr. (supra-vii), while considering the question of judicial review of administrative action, the use of proportionality in Administrative Law in England and India has been summarised under para 28. Accordingly, the validity of any administrative order or statutory discretion is normally to be applied by Wednesbury test to find out if the decision was illegal or suffered from procedural improprieties or was one which no sensible decision-maker could, on the material before him and within the framework of the law, have arrived at. The Court would not interfere with the administrator's decision unless it was illegal or suffered from procedural impropriety or was irrational in the sense that it was in outrageous defiance of logic or moral standards.

In the case of Raunaq International Ltd. (supra-viii), the Supreme Court has considered the questions with regard to Government contracts and intervention by the Court and has also laid down guidelines for the Court's intervention for passing interim orders and as to what care is to be taken and that the interim order is to be moulded to provide for restitution. The conclusions arrived at by the Supreme

Court in the case of Tata Cellular v. Union of India reported in (1994) 6 SCC 651 have also been quoted under para 22 of the said judgment and it has been observed in para 23 that the same view has been reiterated in the case of Asia Foundation & Construction Ltd. v. Trafalgar House Construction (I) Ltd. reported in (1997) 1 SCC 738 wherein it was observed that judicial review of contractual transactions by Government bodies is permissible to prevent arbitrariness, favouritism or use of power for collateral purposes.

In the case of Securities Securities and Exchange Board of India (supra-ix), a Division Bench of this Court has held that the construction has to be given so as to suppress the mischief and advance the remedy and to suppress the subtle inventions and evasions for continuance of the mischief, to add force and life to the cure and remedy according to the intent of the makers of the Act. Thus, the principle "pro bono publico" was followed while considering the validity of the directions issued by the Stock Exchange Board of India to hold auction monies till the investigation was completed.

Mr.Shelat has also made reference to the Principles of Statutory Interpretation by Justice G.P. Singh, Sixth Edition 1996 at page 6 (supra-x) dealing with the legislative intent and made a pointed reference to words, "gray" under Head Note 29 as under:

"The fact is that the difficulties of so-called interpretation arise when the Legislature has had no meaning at all; when the question which is raised on the statute never occurred to it; when what the judges have to do is not to determine what the Legislature did mean on a point which was present to its mind, but to guess what it would have intended on a point not present in its mind, if the point had been present."

(C) As against the aforesaid decisions which were cited by Mr.Shelat, Mr.N.D.Nanavati, learned Counsel for the petitioners, arguing in rejoinder, cited the following decisions with regard to the rule that the question of applying the rule of purposeful interpretation simply does not arise in the present cases and the same is of no avail to the respondents in the present case:

(i) 1993 (Supple.) 1 SCC 730 (Nirothi Lal Gupta and ors. v. Union of India and ors.), para 7 & 9 at p.741 & 742.

(ii) AIR 1992 SC 1981 (Nelson Motis v. Union of India and anr.), para 7 & 8, p.1984.

(iii) (1995) 2 SCC 689 (Babua Ram and ors. v. State U.P. and anr.), para 22, 23 & 30 at p.712.

(iv) AIR 1988 SC 1875 (Dr. Ajay Pradhan v. State of M.P. and ors.), para 7 at p.1878.

(v) AIR 1945 (32) Prevy Council p.48 (Emporor v. Benoari Lal Sharma and ors.).

(vi) 1951 (2) England Reporter, p.839 (Magor and St.Mellons Rural District Council v. Newport Corporation), at p. 841-845.

(vii) (1997) 2 SCC 87 (S.Jagannath v. Union of India and ors.).

Nirothi Lal Gupta and ors. (supra-i) was a case before the Supreme Court under service law relating to seniority, allotment etc. under IAS (Regulation of Seniority) Rules, 1987. In para 7 of this judgment, the Supreme Court observed as under:

> "7..... It is the settled canons of construction that every word, phrase or sentence in the statute and all the provisions read together shall be given full force and effect and no provision shall be rendered surplusage or nugatory. It is equally settled law that the mere fact that the result of a statute may be unjust, does not entitle the court to refuse to give effect to it. However, if two reasonable interpretations are possible, the court would adopt that construction which is just, reasonable or sensible."

These observations are followed by the further observations that, the Court could, in appropriate case iron out the creases to remove ambiguity to give full force and effect to the legislative intention. But the intention must be gathered by putting up fair construction of all the provisions reading together. The endeavour would be to avoid absurdity or unintended unjust results by applying the doctrine of purposive construction.

In para 9 of this judgment, the Supreme Court has observed that the intention of the statutory amendment is

clear and expressive, words cannot be interpolated.

In the case of Nelson Motis (supra-ii), the Supreme Court was concerned with the case of disciplinary proceedings under Art.311 of the Constitution of India, and the Supreme Court in para 8 of this judgment observed that it is well established that if the words of a statute are clear and free from any vagueness and are therefore, reasonably susceptible to only one meaning, it must be construed by giving effect to that meaning, irrsepctive of the consequences.

In the case of Babua Ram and ors. (supra-iii), the case under consideration before the Supreme Court was under the provisions of the Land Acquition Act. While dealing with the question of Principle of Interpretation on Statutes, it has been laid down in para 22, 23 and 30 that, when the language is not only plain but admits of but one meaning, the task of interpretation can hardly be said to arise. Such language best declares, without more, intention of the legislature and is decisive on it. Therefore, when the language is clear and capable of only one meaning, anything enacted by the legislature must be enforced, even though it be absurd or results in startling consequences. The endeavour, therefore, must be to collect the meaning of the statute from the expressions used therein rather than from any notions which may be entertained by the Court as to what is just and expedient. When two interpretations are possible, the task of the Court would be to find which one or the other interpretation would promote the object of the statute, serve its purpose, preserve its smooth working and prefer the one which subserves or promotes the object to the other which introduces inconvenience or uncertainty in the working of its system. It has been stressed that the purpose of interpretation is to ascertain the intention of the legislature so as to make it effective and that if the statute is palin, certain and free from ambiguity, a bare reading of it suffices and its interpretation can never arise. In discovering the legislative intent, the Courts are not exercising legislative power but apply the rules of common sense applying certain legal principles. After quoting from two interpretation of statutes and making reference to Crazes' Statute Law, and Crawford's Interpretation of Laws, it has been laid down in para 30 of the judgment that the construction or interpretation must therefore be construed with reference to its intented purpose and the scope and meaning of the statute must be determined by the language used therein. Necessary implications may be read into the statute. True implications, sense and

spirit are as much a part of the language which makes up the statute as the meanings of the various words as a part of it. The statute must, therefore, be analysed and expressed meaning ascertained. So far as the question of strict and liberal interpretation is concerned, the Supreme Court has observed that it should be used as a tool in the process of ascertaining the legislative intent when it is in doubt. Otherwise, they will have little or no value and this is a part of interpretative process assigned to the court as a subject to make the legislative intent clear, effective and efficacious.

In the case of Dr.Ajay Pradhan (supra-iv), the same principle with regard to the interpretation of Statutes has been enunciated that a Rule must be interpreted by the written text. If the precise words used are plain and unambiguous, the Court is bound to construe them in their ordinary sense and give them full effect. The plea of inconvenience and hardship is a dangerous one and is only admissible in construction where the meaning of the statute is obscure and there are alternative methods of construction. Where the language is explicit its consequences are for Parliament and not for the Courts to consider. The aforesaid observations were made by the Supreme Court while considering the purported effect of Rule 10 of the Rules prescribing the manner in which the seats available in a particular year were required to be filled up as the Rule provided that the seats available in any particular year will be filled up in that year. No candidates will be admitted against the seats remaining vacant from previous year and the aforesaid principle was applied to the Rules framed by the State Governments under Article 162 of the Constitution. The Supreme Court in para 7 of this judgment also made reference to the Privy Council decision in the case of King Emperer v. Benori Lal Sharma, reported in 72 Ind. App. 57 at p.70, i.e. AIR 1945 PC 48 at p.53. The observations made by Viscount Simon were quoted that, "Where the language of an Act is clear and explicit, we must give effect to it whatever may be the consequences for in that case the words of the statute speak the intention of the legislature."

In the case of Emporor (supra-v) while applying the principles of interpretation of statutes, it is held that in construing enacted words the Court is not concerned with the policy involved or with the results, injurious or otherwise, which may follow from giving effect to the language used.

In the case of Magor and St.Mellons Rural

District Council (supra-vi), a view was expressed by the House of Lords that, the duty of the Court is to interpret the words that the legislature has used. Those words may be ambiguous, but, even if they are, the power and duty of the Court to travel outside them on a voyage of discovery are strictly limited. It has been then observed that the Court, having discovered the intention of Parliament and of Ministers too, must proceed to fill in the gaps. What the legislature has not written, the Court must write. This proposition which re-states in a new form the view expressed by the Lord Justice in the earlier case of Seaford Court Estates, Ltd. v. Asher (1949) 2 All England Reporter, p.155) cannot be supported and Lord Simonds has observed that, 'it appears to me to be a naked usurpation of the legislative function under the thin disguise of interpretation, and it is the less justifiable when it is guesswork with what material the legislature would, if it had discovered the gap, have filled it in. If a gap is disclosed, the remedy lies in an amending Act. In this very judgment, the view expressed by Parker, J. has been quoted saying that:

> "I would repeat what I said in Seaford Court Estates, Ltd. (supra). We do not sit here to pull the language of Parliament and of Ministers to pieces and make nonsense of it. That is an easy thing to do, and it is a thing to which lawyers are too often prone. We sit here to find out the intention of Parliament and of Ministers and carry it out, and we do this better by filling in the gaps and making sense of the enactment than by opening it up to destructive analysis."

It has been then observed that,

> "In so far as the intention of Parliament or of Ministers is revealed in Acts of Parliament or orders, either by the language used or by necessary implication, the Courts should, of course, carry these intentions out, but it is not the function of any Judge to fill in what he conceives to be the gaps in an Act of Parliament. If he does so, he is usurping the function of the legislature."

In the case of S.Jagannath (supra-vii), The Supreme Court while dealing with the notifications with regard to the Coastal Regulation Zone, the provisions of the Environment (Protection) Act, 1986, in the context of Articles 21, 41A and 51 of the Constitution, taking note

of all the argument with regard to the sustainable development, has observed in para 23 that, the purpose of CRZ Notification is to protect the ecologically fragile coastal areas and to safeguard the aesthetic qualities and uses of the sea coast. The setting up of a modern shrimp aquaculture farms right on the sea coast and construction of ponds and other infrastructure thereon is per se hazardous and is bound to degrade the marine ecology, coastal environment and the aesthetic uses of the sea coast. The Court has observed that it had no hesitation in holding that the shrimp culture industry is neither "directly related to waterfront" nor "directly needing foreshore facilities". The setting up of shrimp culture farms within the prohibited areas under the CRZ Notification cannot be permitted. It has been then observed in the end of this para 25 of this judgment that, "It is thus obvious that an industry dependent on sea water cannot by itself be an industry "directly related to waterfront" or "directly needing foreshore facilities". The shrimp culture industry, therefore, cannot be permitted to be set up anywhere in the coastal regulation zone under the CRZ Notificastion.

In this judgment, reference has been made to the reports including the reports by NEERI and in para 34 of this judgment, it has been observed that,

> "Mangrove forests constitute an important component of coastal ecosystems. They thrive in tidal estuaries, salt marshes and muddy coastlines. Conversion of mangrove to shrimp farms significantly reduces the natural production of wild capture shrimp as well as other fishes. Moreover, their production role for low-lying coastal regions is rapidly diminishing by their replacement by shrimp ponds."

After quoting the UN Report regarding the polluted waters and depleted fisheries, in para 37 and 38 of this judgment, a reference has been made to Articles 48A and 51A of the Constitution and in para 40 it has been observed that the State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country and that the Constitution imposes as one of the fundamental duties on every citizen, the duty to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures. In para 49 of this judgment, the Supreme Court has made reference to its earlier decision in the case of Vellore Citizens' Welfare Forum v. Union of India, reported in (1996) 5 SCC 647 in

which case the Supreme Court dealt with the concept of 'Sustainable Development', and has accepted 'The Precautionary Principle' and "The Polluter Pays Principle" as part of the environmental laws of the land. In this case of Vellore Citizens' Welfare Forum (supra), the view was expressed that, "The Precautionary Principle" and "The Polluter Pays Principle" are essential features of "Sustainable Development" and that the "The Precautionary Principle" and "The Polluter Pays Principle" have been accepted as part of the law of the land. In the light of the discussion in its entirety, the directions at Nos.1 to 15 were given in para 52 of this judgment and the writ petition was allowed.

40. From the study and analysis of various cases which have been cited before us on behalf of both the sides as discussed above, the following principles are clearly deducible:

(i) In the case of administration of justice, the adaptability and flexibility is to be taken as the virtue of the law and apply the law accordingly depending upon situation.

(ii) The law is made for the society and whichever is beneficial for the society, the endeavour of the Law Court would be to administer justice having due regard in that direction.

(iii) When a defect appears in a Statute, it should be the constructive task of the Court so as to find the intention of the Parliament and then supplement the written words so as to give force and life to the intention of the legislature, but a Judge must not alter the material on which the Act is woven, but he can and should iron out the creases.

(iv) To give effect to the legislative intent, the Court can look into and some times may even go behind the words and enactment, by ascertaining the purposeful meaning of the language deployed, the spirit and sense which the legislature has aimed and intended to convey and the conclusions to be drawn which are in the tenor of the law though not within the letter of the law.

(v) The ascertainment of legislative intent is a basic rule of the statutory construction and a Rule of construction should be preferred which advances the purpose and object of the legislation, though a construction, according to plain language, should ordinarily be adopted, but such a construction should not be adopted where it leads to anomalies, injustice or absurdities.

(vi) Where the words are clear and unambiguous, no question of construction may arise and the real basis for this golden rule of construction that where the words of statutes are plain and unambiguous, effect must be given to them because plain words may be expected to convey plainly the intention of the legislature.

(vii) The legislative intent is to be gathered from the statute itself for the first instance, then from the preamble, next from the Statement of Objects and Reasons, then from parliamentary debates, reports of committees and commissions which preceded the legislation and finally from all legitimate and admissible sources from where there may be light including the legislative history.

(viii) Every word, phrase or sentence in the statute and all the provisions read together is to be given full force and effect. The legislature does not waste the words and therefore, no provision is to be rendered as surplusage or nugatory.

(ix) Even if the result may be unjust, the Court cannot refuse to give effect to such a statute, but in case two reasonable interpretations are possible, the Court should adopt the construction which is just, reasonable or sensible.

(x) When two interpretations are possible, the task of the Court would be to find which one or the other interpretation

would promote the object of the statute, serve its purpose, preserve its smooth working and prefer the one which subserves or promotes the object to the other which introduces inconvenience or uncertainty in the working of its system.

(xi) The purpose of interpretation is to ascertain the intention of the legislature so as to make effective and that if the statute is plain, certain and free from ambiguity, a bare reading of it is sufficient.

(xii) Unless the meaning of the statute is obscure, the plea of inconvenience and hardship is dangerous to follow.

(xiii) In construing the words in an enactment, the Court is neither concerned with the policy involved nor with the results, injurious or otherwise, which may follow from giving effect to the language used.

(xiv) The Court's duty is to find out the intention of the legislature through the words used by the legislature and even in cases where the words are ambiguous, the scope to travel outside them for the Courts is strictly limited.

(xv) The duty of the Court is to carry out the intention of the legislature even if it is found that there are any gaps, such gaps can be filled in only for the purpose of giving effect to the legislative intent and for no other purpose.

(xvi) The principle of purposeful and meaningful interpretation so as to give life to the statute and also to iron out the creases and to fill up gaps is also to be applied only for the purpose of advancing the object of the enactment sought to be achieved by the Act in conformity with the legislative intent and not otherwise and in doing so, the consequences to follow are not relevant.

41. Now, these are the principles laid down in

various decisions rendered by the Supreme Court which have to be taken as the guiding and binding principles for the purpose of interpretation. Therefore our task is to give the correct import and interpretation of Section 29 of the Wild Life (Protection) Act, 1972 on the basis of the aforesaid principles which stand crystallised as part of the judicial opinion through various decisions to which the reference has been made hereinabove.

42. Section 29 has already been stated in the earlier part of this judgment in para 30 at page 42 and we find that the language employed by the legislature in Section 29 does not admit of any ambiguity. Each and every word as has been used by the legislature in Section 29 gives a definite and clear meaning and these words are to be interpreted in the context of the object for which the Act has been created. We have already stated the preamble, object and the reasons of this Act, namely, for protection of wild life. Therefore, any provision of the said Act is to be construed keeping in view as to what is going to promote the cause of protection of the wildlife and to subserve the object which is sought to be achieved by this Act. The values which the legislature itself cherished so as to bring about this piece of legislature goes to show that the protection of wild life was the supreme purpose for which the Act was brought about and therefore, the protection of wildlife and the better management thereof runs throughout the scheme of the Act as a fibre to connect and inter-connect the various provisions and the whole scheme of the Act is inter-woven in a manner that there should be a strict vigilance and watch for the protection of the wildlife and through this Act, the Directive Principle as contained in Article 48A has been sought to be given effect to and it must go ahead as a fundamental duty and Articlde 51A of the Constitution to see that the words as have been used by the legislature and the entire tenor of this piece of legislature must get its full meaning. The Section from its very beginning starts with a negative clause, i.e. prohibiting or restricting any person to destroy, exploit or remove any wildlife. Thus, the restriction is against destruction, exploitation or removal thereof from a sanctuary. The next part is against the destruction or damage to the habitat of any wild life or deprivation of the habitat for the wild life in such sanctuary. After laying restrictions as aforesaid, exception has been made by providing that against such prohibition an exception may be in accordance with the permit granted by the Chief Wildlife Warden with the further rider that no such permit shall be granted unless the State Government is satisfied that such destruction, exploitation or removal

of wildlife from the sanctuary is necessary for improvement and better management of wild life therein. Thus, while considering the question of making any exception for any person to destroy, exploit or remove or to deprive the wild animal from its habitat, what is to be considered by the Government is as to whether it is necessary for improvement and better management of the wild life and that better management for the wild life has to be considered in the context of destruction, exploitation or removal. There appears to be the causal relationship between the destruction, exploitation and removal and the better management of wild life as conceived by the provisions of Section 29 and the satisfaction of the Government has been made necessary. In other words, the Government should arrive at the satisfaction that it is necessary to grant such permission for destruction of wild life, as otherwise in case such permission for destruction, exploitation or removal is not granted, the same would adversely affect the improvement and better management of the wild life. The words, "unless" and "necessary" as used in the Section are very significant and are of great importance in interpreting the scope of this Section. When we say that any activity is necessary, it would mean that the same is indispensible, it is essential or needful. Now, it is to be seen as to whether it could be said in the facts of the present case that the laying of the oil pipeline through the sanctuary was necessary for improvement and better management of the marine life, in other words, was it indispensible or essential and could it be said that unless the oil pipeline is laid and through laying of such pipeline, some destruction of the wild life is brought about, it would hamper the improvement and better management of the wild life. The word "necessary" has been interpreted by a Division Bench of our own Court in the case of Jayantilal Purshottamdas v. State of Gujarat and ors. reported in 11 GLR 403. In this case, the Division Bench of this Court was concerned with the case under the Land Acquisition Act. The words which fell for consideration was under Section 5(1) of the Act providing requisition of land by an order in writing for a public purpose, if in the opinion of the Government or its delegate, it is necessary or expedient so to do. It is in this context that the word "necessary" or "expedient" came up for consideration. It was found that the legislature has laid down that not only the power shall be exercised for a public purpose but it shall be so exercised only if it is "necessary" or "expedient" so to do, by an order in writing and while interpreting the said words, in para 17, the Court has clearly recorded that, "necessary" means what is

indispensible, needful or essential. The term has a precise meaning and connotation and there is nothing vague or nebulous about it. Thus, it is very clear that the use of the word "necessary" in Section 29 denotes the necessity for the improvement and better management of the wild life and the satisfaction of the Government has to be recorded in cases where the Government feels satisfied that unless the permission for the activity sought to be done is granted, there cannot be any improvement and better management of the wild life and further that such permission has to be granted for the purpose of destruction, exploitation or removal and for no other purpose because the restriction itself as imposed in Section 29 is against these three terms and for no other purpose. Similar is the import of the word "unless" used in this Section which denotes the satisfaction of the Government that it was necessary to grant permission for destruction, exploitation or removal and the same was necessary for the improvement and better management of the wild life as a condition precedent and pre-requisite and unless and until such pre-condition or pre-requisite exists, there is no occasion for grant of such a permission.

3rd August 2000:

43. So far as the word, "satisfied' as used in Section 29, it is clear that it is the Government which is to be satisfied that the permission which is sought to be granted is necessary for the better management of the wild life. The word "satisfied" is certainly a term of considerable importance. It has to be understood to mean, free from anxiety, doubt, perplexity, suspense or uncertainty. In the given context, it must be synonymous with the term "convince beyond a reasonable doubt". In the case at hand, we find that the satisfaction of the Government was required for the purpose of granting permission keeping in view the basic requirement as to whether the granting of such permission was necessary for the better management of the wild life when the permission was sought for laying the crude oil pipeline. The question is that the Government is to be satisfied beyond reasonable doubt that the grant of such permission for laying the pipeline was necessary, in other words, indispensible for the better management of the wild life. In our opinion, the language of Section clearly postulates that the permission is required to destroy, exploit or remove any wild life from a sanctuary and such permission cannot be granted unless the Government is satisfied that such destruction, exploitation or removal of the wild life from the sanctuary is necessary for the

improvement and better management of the wild life therein. The question, therefore, arises that whether the grant of permission for laying down the crude oil pipeline is a permission for destruction, exploitation or removal of wild life and that the same is necessary for improvement and better management of wild life? By no stretch of imagination it could be said that when a permission is sought for laying the crude oil pipeline, it is a permission for destruction, exploitation or removal of the wild life and necessary for the improvement and better management of wild life. The laying of a crude oil pipeline entails consequences with regard to the destruction, exploitation or removal of wild life and therefore, it should be taken to be a permission for destruction, yet it cannot be said that the laying of a crude oil pipeline is necessary or indispensible for the purpose of improvement and better management of the wild life. Reference has been made to several reports, the details of which we have already given in the earlier part of this judgment and certain portions out of it were also read out before us to show that the activity for which the permission has been granted may result into improvement and better management of the wild life. Such reports which have been made as sponsored by the parties and given by various institutions including the Institute of Oceanography and NEERI etc. are of course opinions rendered by expert bodies but, neither such reports are binding on the Courts nor on the basis of such reports and portions which have been read out before the Court, it can be said that the granting of such permission was necessary for better management and improvement of the wild life. To say that such an activity may result into an improvement or better management of wild life is much different than to say that it is necessary or indispensible. No expert body of any of these Institutes have ever reported that the laying of such a crude oil pipeline in the sanctuary area is necessary, and indispensible for better health, improvement and better management of the wild life nor any one can say so. The whole purpose for enacting Section 29 was that destruction, exploitation or removal of the wild life from the sanctuary may be permitted only when the Government is satisfied that such destruction, exploitation or removal of the wild life is necessary in the interest of wild life itself, meaning thereby that illustratively in cases where there is an excessive growth which may be injurious to the wild life itself or when there is a disease which may harm the existing wild life and for that purpose it is required to be destroyed or exploited or removed, such requirement of giving such permission be considered necessary. In no case it could

ever be meant and the legislative intent could not be read to mean that the grant of the permission for laying such crude oil pipeline in the sanctuary is necessary and indispensible, nothing can be conceived on the basis of which any welfare State can feel satisfied for the grant of permission to lay of the crude oil pipeline in the sanctuary for better management and improvement of the wild life so as to consider it to be necessary or indispensible for that purpose. We therefore find that in the given context the satisfaction cannot be said to have been arrived at in accordance with the legislative intent, rather it is based on considerations which are alien to the object of the Act and which are not at all germane.

44. It was strenously argued with commitment, conviction, vehemance and emphasis on behalf of the petitioners by Dr.Mukul Sinha that the scheme of this Act creates a closed zone, closed area for any human activity in the sanctuary or the national park and therefore, there is no question of granting any such permission and in this regard, reference was made to the other provisions of the Act and it was pointed out that under Section 27, there is a restriction on entry against persons other than those who have been specified therein and Section 28 which provides for grant of permits also specifies the purposes for which the permit can be granted and therefore, what has been submitted is that the permit which is to be granted even under Section 29 of the Act cannot exceed the scope and limits of the specified purpose of Section 28. Therefore, there is a restriction against persons, the purposes for which the permission has been granted under Section 28 and as such, any permit or permission granted under Section 29 cannot exceed or go beyond the scope of Sections 27 and 28 and therefore, the permission which has been granted in the instant case is in clear contravention of all these provisions. Even while making provision for control of sanctuary under Section 33, what has been left open for the Chief Wildlife Warden to control, manage and maintain sanctuaries is that, he may construct such roads, bridges, buildings, fences or barrier gates etc. which he may consider necessary for the purposes of such sanctuary, the underlined purposes for the purposes of the sanctuary itself and not for any other purpose. He may take steps to ensure the security of the wild life in the sanctuary, may take such measures in the interest of the wild life as he may consider necessary, may regulate, control or prohibit, in keeping with the interests of wild life as he may consider necessary for the improvement of live stock. However, on the basis of

these very provisions, it was submitted on behalf of the respondent State of Gujarat by Mr.Tanna and on behalf of BORL by Mr.Shelat that the provisions of Section 33 make it clear that it is not a closed zone inasmuch as certain activities as mentioned in Section 33 have been permitted. To buttress their arguments, they have also submitted that once the construction of roads, bridges, buildings, fences and barrier gates and carrying out of such other works has been made permissible, there is no question of treating it as a closed zone. It was sought to be pointed out from the body of the impugned authorisation dated 4th February 2000 itself that the legal aspect of permitting such a pipeline through Marine Sanctuary under Wildlife (Protection) Act, 1972 was examined by the Additional Advocate General of Gujarat, Additional Solicitor General of India, Solicitor General of India and Attorney General of India and that as opined by the Additional Solicitor General, Solicitor General and Attorney General, such pipeline through a sanctuary can be permitted under Section 29 of the Wildlife (Protection) Act, 1972, if the damage is negligible and reversible and at the same time, if such activity is beneficial to the conservation of wildlife and its habitat in the long run through mitigating and additional conservation measures and that considering such legal and ecological aspects, the BORL under the advice had carried out the studies and submitted fresh proposals for the modified route-2A along with a comparative statement of various routes highlights that the modified route-2A is the least damaging one. In this regard, the aid was also sought to be taken from the following portion of para of 14 of the judgment dated 10th December 1999 wherein it was observed that,

> "The Division Bench in a similar challenge has accepted the contention to the effect that instead of de-notifying the area under Section 26-A(3), if permission is granted upon minimal damage, that would amount to better management of wild life."

It may be at once clarified that this was only a submission made on behalf of the respondents in the context of making choice between denotification and grant of permission. We find that firstly, the concept of minimal damage or reversible loss are alien so far as the legislative intent is concerned as is manifested in Section 29 itself. When the reference was made to legal opinions, it was given out by Mr.Tanna that there were two opinions of the same date of 20th November 1998 given by Mr.Santosh Hegde and another opinion dated 29th June

1999 given by the then Additional Solicitor General (opinion dated 7.7.1999 was given on some further query), the opinion of the Additional Advocate General was taken on 10th August 1999, the opinion of the Attorney General General Mr.Soli Sorabjee on 13th August 1999 and lastly the opinion of the Senior Advocate of this High Court on 12th December 1999 and 22nd December 1999 were considered. During the course of arguments, Dr.Sinha appearing on behalf of the petitioners submitted that he may be supplied the copies of these opinions which were being read out and it was pointed out that in the body of the order itself, the reference has been made to such opinions and therefore, the respondent State of Gujarat be asked to supply the copies of these opinions. However, such opinions are privileged communications and the respondents could not be asked to supply the same to the petitioners as they were privileged communications between the clients and the Counsel and the law does not permit us to direct the supply of such opinions and therefore, this request of Dr.Sinha was declined. Whereas it was mentioned in the body of the order in the very same paragraph that as opined by the Additional Solicitor General, Solicitor General and Attorney General, such pipeline through a sanctuary could be permitted and while saying so, the mention to the opinion given by the Additional Advocate General of Gujarat was omitted, on behalf of petitioners it was sought to be arggued that, it impliedly means that the opinion of Additional Advocate General may have been against the respondents and therefore, it does not find place in the later part of the order where the other opinions have been relied upon in the end, and in that case the question arises as to why such opinion of the Addl.Advocate General of Gujarat has not been considered and the opinions given by others were relied upon? We are not at all concerned with these controversies as such things can always be obtained when the Government was faced with a problem in which it required a legal advice. Any party can seek any legal advice and it is for such party to accept or not to accept the advice so rendered and proceed accordingly. In any case, our task is to interpret the law and while doing so, we have to apply the principles which have been enunciated in the earlier part of the order and therefore, we find that as several litigations had already taken place in past, the State Government simply wanted to arm itself with the legal opinion before passing the impugned orders. However, the principle of one time loss and reversible loss etc. on which the decision has been taken in this regard are, in our opinion, not within the scope and ambit of Section 29. The provisions of Section 33 with regard to control

of sanctuaries also permit the activities specified therein only for the purpose of sanctuary itself to ensure the security of the wild animals, the measures in the interest of the wild life and in keeping with the interest of the wild life. Therefore, such activities are also permissible only for that limited purposes. Now, the span and scope of these purposes cannot be extended for granting permission to lay of the crude oil pipeline in the sanctuary. Thus, in our opinion, the scheme of the Act read as a whole does create a closed zone for any purpose other than the purposes which are prescribed under the Act, viz. for entry of persons Section 27, for purposes specified under Section 28 and even for the activities mentioned under Section 33 only for the purposes of such sanctuary and for no other purpose and we have already held that under Section 29, the laying of the crude oil pipeline could not be said to be necessary or indispensible for the improvement and better management of the wild life and therefore, even if consequently the laying down of the pipeline results into any destruction, where it is minimal or one time loss or reversible loss, it cannot be said to be a permission for destruction, exploitation or removal as such. In this regard, we may also make reference to Section 26-A(3) of the Act. Now according to this Section, no alteration of the boundaries of sanctuary shall be made except on a resolution passed by the Legislature of the State. Therefore, any act which may directly or indirectly affect the alteration of the sanctuary is not possible except on a resolution passed by the Legislature of the State. Any act which cannot be done and is forbidden under law to be done directly cannot be precipitated by the executive in an indirect manner according to the well recognised principle, that, what cannot be done directly cannot be permitted to be done in an indirect manner and thus the executive cannot obviate, evade or avoid the requirement of the function which has been entrusted to the Legislature. The Legislature, Executive and the Judiciary operate in different fields and the Executive cannot assume or usurp any Legislative function nor the Executive can speak a language other than what is employed by the Legislature. The Executive cannot have a different tongue so as to trumpet the ideals of environmental laws and to act in a different manner when it comes to real action. In the facts of the present case, we find that in more than one cases, the permissions have been granted for laying the oil pipeline and every time it is said that it is a one time action. If every time it is said that it is one time action, it cannot be said to be one time and it becomes a case of endless process which cannot be allowed to be repeated.

Therefore, the provisions of Section 26-A also indicate that it has to be a closed zone for all activities and purposes and persons other than what has been prescribed under the Act and the boundaries of the sanctuary can be interfered with only on the basis of a resolution passed by the Legislature and in no other manner whatsoever directly or indirectly. It is the trite law on the basis of the principle laid down in the case of Taylor v. Taylor (1876) 1 Ch.D. 426 referred in Nazir Ahmed v. Emperor reported in AIR 1936 P.C. 253(2) followed and applied by the Supreme Court in the case of State of U.P. v. Singhora Singh reported in AIR 1964 SC 358 (para 7) that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and that other methods of performance are necessarily forbidden.

45. The tenor of the order dated 4th February 2000 itself, as has been passed goes to show that the respondent State has proceeded on the basis that it is going to be a case of minimal loss and that on the basis of the reports which were made available to it, it found that the modified route 2-A is the least damaging one. The argument was raised on behalf of the petitioners that this modified route 2-A was nothing but the earlier route 2 and that after the earlier judgment of the Division Bench in earlier petition with regard to BORL, no further exercise was undertaken by the Government and after a short time of dismissal of the petition on the ground that it was premature, the present impugned orders were passed and it was also submitted that no serious consideration was made with regard to the other routes as was given out before the Division Bench when the earlier petition was decided on the basis of the preliminary point of the petition being premature on 10th December 1999. However, the impugned order dated 4th February 2000 shows that various routes were considered and the modified route 2-A is not the same and it has been made clear that this modified route 2-A is a little different and for that purpose reference was also made to the maps with the actual site and the location through which this modified route 2-A passes. A reference was also made to the distance etc. and it was pointed out that after considering the feasibility with regard to each and every route, for which the reference was made before the Court earlier, was duly considered. However, so far as the Mundra route was concerned, it was given out that this route had not been subjected to field studies and this is a route which passes through a part of the sanctuary and if the studies are sought to be conducted for that purpose, it would further delay the whole project and in

this regard, the reference was made to the following details:

It is mentioned in the body of the order itself that Vadinar involves passing of a pipeline through the marine sanctuary whereas the pipeline from Mundra involves the Wild Ass Sanctuary in the old Rann of Kutch. The length of pipeline passing through the marine sanctuary on the modified route 2-A is only 2.7 kms. along with the creek which is much less compared to the length of the pipeline route passing through the Wild Ass Sanctuary and considering the above aspects, the modified route 2-A near Vadinar along the creek is not only technically feasible but also causing least damage to the marine life and environment. Mr.Shelat has also made reference to certain Annexures in tabular format and charts so as to show the feasibility of the route, i.e. modified route 2-A. Even the chart at page 280 of the paper book filed by the State Government along with the reply shows the details about Vadinar, Mundra and Pipavav. It is mentioned with regard to Mundra that it was similar to Vadinar or same as Vadinar in certain respects, but in the column of Sanctuary/Length through Sanctuary, for Vadinar, it is 2.7 km. Marine Sanctuary and for Mundra, it is 10 km. Wild Ass Sanctuary and in the bottom for Vadinar against column of Project Viability that it is completed whereas for Mundra, it is to be evaluated, meaning thereby that so far as Vadinar is concerned, it is said that the studies have been completed, the project is viable, and for Mundra, it is said it is not feasible and that it is yet to be evaluated. It is not at all for this Court to enter into this exercise as to whether the permission should be granted for route "X" or route "Y", it is after all for the Government to consider and it is not the task of this Court to interfere on this aspect of the matter and the main question is whether such a permission could at all be granted or not and therefore, we are not inclined to enter into this controversy on the basis of several datas which have been made available on behalf of both the sides and for and against the feasibility of the different routes or the modified route 2-A in particular. It is mentioned in the body of the impugned order also that the State Government, having considered all the facts and legal opinions, is completely satisfied that permitting BORL pipeline on the modified route 2-A is in the over all interest of the State and Nation and protection as well as mitigation and improvement work is likely to benefit the marine life and that granting such permission will not be against the spirit of the Wild Life (Protection) Act, 1972 and therefore, it decided to

authorise the Chief Conservator of Forests (Wildlife) and the Chief Wildlife Warden to permit BORL to lay its submarine crude oil pipeline from its SPM to COT near Vadinar along the modified route 2-A in the Siri-Ballarpur Jetty creek between Narara and Chakharkota reefs. It is, therefore, obvious that the Government's decision is based on being satisfied that the permission was in the interest of the State and Nation and protection and mitigation of improvement and for the benefit of the marine life. It was submitted that the interest of the nation has to be kept in view and the argument was also raised on the concept of 'Sustainable Development'. In such cases, as and when an argument of 'Sustainable Development' is raised as against the requirement of the protection of environment, the Court has to strike a balance. The 'Sustainable Development', of course, yes, but even such 'Sustainable Development' has to be within the framework of the law and it cannot be said that 'Sustainable Development' is not possible within the framework of the law. Once the law has set its limits and contours, the Government while executing the intention of the Legislature manifested through various enactments, cannot throw all the norms of the protection of the wild life to which such norms have to be valued and the values which are cherished with regard to environment have to be kept in view. In our opinion, it is not also a case in which the principle that "Polluter Pays" is applicable and such questions arise only when the pollution is made and the Polluter is required to compensate for the same. Here is a case in which the permission is sought in advance for the purpose of an activity which is forebidden under the Act itself. Therefore, those principles cannot be applied so as to first permit what is not permissible and then lay down the conditions and ask the parties to compensate for it on the principle of "Polluter Pays".

46. It was also submitted on behalf of the respondents that in this case the permission had already been granted by the Ministry of Environment and Forests, Govt. of India through letter dated 7th December 1999 and through letter dated 2nd March 2000 the permission had also been granted in accordance with the CRZ notification and the conditions were to be enforced under the provisions of the Environment (Protection) Act, 1986, Public Liability Insurance Act, 1991, Air (Prevention and Control of Pollution) Act, 1981, Water (Prevention and Control of Pollution) Act, 1974 along with their Rules, Notifications and amendments. The reference was also made to the amendments made therein vide Notification issued under Sections 3(1) and 3(2)(5) of the Environment

(Protection) Act, 1986 and Rule 5(3)(d) of the Environment (Protection) Rules, 1986 declaring the coastal stretches as Coastal Regulation Zone (CRZ) and the regulation activities in the CRZ. According to this amendment, under the heading of "Prohibited Activities", the following activities were declared as prohibited within the Coastal Regulation Zone, namely;

(i) setting up of new industries and expansion of existing industries, except those directly related to water front or directly needing foreshore facilities;

(ii) manufacture or handling or storage or disposal of hazardous substances as specified in the Notifications of the Government of India in the Ministry of Environment & Forests No.S.O.594(E) dated 28th July 1989, S.O.No.966(E) dated 27th November 1989 and GSR 1037(E) dated 5th December 1989;

(iii)
to xxx xxx xxx
(x)

(xi) construction activities in ecologically sensitive areas as specified in Annexure-I of this Notification;

(xii) any construction activity between the Low Tide Line and High Tide Line except facilities for carrying treated effluents and waste water discharges into the sea, facilities for carrying sea water for cooling purposes, oil, gas and similar pipelines and facilities essential for activities permitted under this Notification.

Annexure-I to this Notification under the heading of "Coastal Area Classification and Development Regulation" provides for Classification of Coastal Regulation Zone under 6(1) according to which the zones have been specified as Category-I (CRZ-I), Category-II (CRZ-II) and Category-III (CRZ-III). So far as Category-I (CRZ-I) is concerned, it says that, areas that are ecologically sensitive and important, such as national parks/marine parks, sanctuaries, reserve forests, wildlife habitats, mangroves, corals/coral reefs, areas close to breeding and spawning grounds of fish and other marine life, areas of outstanding natural beauty/historically/heritage areas, areas rich in genetic diversity, areas likely to

be inundated due to rise in sea level consequent upon global warming and such other areas as may be declared by the Central Government or the concerned authorities at the State/Union Territory level from time to time, and (ii) area between the Low Tide Line and the High Tide Line. For regulation of activities it is provided under Section 6(2) that the development or construction activities in different categories of CRZ area shall be regulated by the concerned authorities at the State/Union Territory level, in accordance with the following norms:

CRZ-I: No new construction shall be permitted within 500 metres of the High Tide Line. No construction activity, except as listed under 2(xii), will be permitted between the Low Tide Line and the High Tide Line.

It was submitted that there was no challenge to the permission dated 7th December 1999 and 2nd March 2000 and in absence of the challenge, there is no question of any relief to the petitioners so far as the authorisation issued in February 2000 is concerned. In answer to this objection, it was submitted on behalf of the petitioners that the permission which was granted on 7th December 1999 was subject to fulfillment of the conditions mentioned at nos.1, 2, and 3 of this letter and under item no.3, the action was required to be taken for necessary clearance under the Wild Life (Protection) Act, 1972 and the Environment (Protection) Act, 1986 and it was submitted with regard to the permission dated 2nd March 2000 that this document had been filed by the respondents in their defence and therefore, there is no question of any challenge to the same in the petitions.

47. Having gone through the Coastal Regulation Zone Notification, we find that so far as the construction activities in ecologically sensitive areas as specified in Annexure-I of this Notification under the Environment (Protection) Rules, 1986 are concerned, the same are prohibited. The prohibition is between the Low Tide Line and the High Tide Line, but exception has been made and such exception include the facilities for carrying water for cooling purposes, oil, gas and similar pipelines and facilities essential for activities permitted under this Notification. It was also submitted that the areas between the Low Tide Line and the High Tide Line may also include the areas which may be ecologically sensitive and therefore, even if the exception has been made with regard to the oil, gas, and similar pipelines and facilities essential for activities permitted under this Notification, the prohibition under Clause (ii) remains

so far as the ecologically sensitive areas specified in Annexure-I are concerned and therefore, even with regard to Low Tide Line and the High Tide Line if the area is ecologically sensitive, the exception would not apply. There is no dispute that the area in question is CRZ-I. Ecologically sensitive and important areas as have been prescribed in Annexure-I under the heading, Category-I (CRZ-I) include national parks/marine parks, sanctuaries, reserve forests etc. Therefore, ecologically sensitive areas include sanctuaries and such ecologically sensitive area may also be there between the Low Tide Line and the High Tide Line and therefore, in the areas which are ecologically sensitive areas, such as sanctuaries even if exception is made under Clause (xii) with regard to oil, pipelines, etc., such exception can not be applied to the ecologically sensitive areas including the sanctuary as is the case at hand. On behalf of the respondents, it was also submitted that Section 24 of the Environment (Protection) Act, 1986 has an over-riding effect and therefore, once the permission has been granted under the Rules made under the Environment (Protection) Rules, 1986, and the same is not under challenge, there is no question of granting any relief to the petitioners. Section 24 of the Environment (Protection) Act is reproduced as under:

> "24. EFFECT OF OTHER LAWS.-- (1) Subject to the provisions of sub-section (2), the provisions of this Act and the rules or orders made therein shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act.
>
> (2) Where any act or omission constitutes an offence punishable under this Act and also under any other Act then the offender found guilty of such offence shall be liable to be punished under the other Act and not under this Act."

True it is that Section 24 provides in terms that subject to the provisions of sub-section (2) of the provisions of the said Act and the Rules or orders made therein shall have the effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act and this provision has given rise to the argument that the permission granted under the said Act and the order passed on 2nd March 2000 must have an over-riding effect over the provisions of Section 29 of the Wild Life (Protection) Act. Having considered the over-riding effect of this provision and the Rules made thereunder, we find that Clause (ii) of the CRZ is also the Rule made

under this very Act and therefore, in accordance with Clause (ii) of the aforesaid Regulations in so far as the ecologically sensitive areas are concerned, again it itself gives an over-riding effect and in that view of the matter, it cannot be said that the permission could be granted. The argument raised on the basis of Section 24 therefore, stands answered by Clause (ii) itself and needs no further elaboration on this aspect of the matter because it cannot be said that the area between the Low Tide Line and the High Tide Line can never include an ecologically sensitive area and in the facts of these cases, such ecologically sensitive area does include the part of the sanctuary and the pipeline for which the permission had been granted passes through the sanctuary.

48. Now, comes the question with regard to the applicability of the principle of 'flexible interpretation' and the interpretation so as to give meaning and life to the provisions of the Act, we find that such principles could certainly be made applicable, but those principles can be applied only for the purpose of advancement of the objects sought to be achieved and not otherwise. In the facts of these cases, the legislative intent is very clear that for any step taken or an order to be passed or permission to be given, the object of the Act has got to be advanced and therefore, such principles are to be utilised in aid of advancing the object of the Act and we find that the application of such principles in the instant cases, could not be made so as to defeat the purpose and object of the Act.

49. In the light of the discussion as aforesaid, our answers to the questions as formulated in para 37 are as under:

(1) Any area established as marine sanctuary or marine national park under the provisions of the Act is not open to be utilised for any purpose other than the purposes prescribed under the Act except in accordance with Section 26-A(3) and Section 35(5) and it is a closed zone.

(2) Under Section 29 of the Act, the Government has authority to grant permission only for the purpose of destruction, exploitation or removal of any wild life from the sanctuary in case it is necessary for the improvement and better management of the wild life itself in case the Government is satisfied that

the grant of such permission is necessary.

(3) The laying of pipeline through a sanctuary cannot be said to be necessary for the improvement and better management of wild life therein.

50. In view of our answers as aforesaid, in normal course, we would have at once quashed and set aside the impugned authorisation as has been granted by the Government as also the consequential permission, but for the reasons as under, we do not find that interference is called for by this Court so as to quash and set aside the impugned authorisation and permission even though we have come to this conclusion on the question of law that under Section 29, such authorisation or permission could not have been granted:

(1) In the first instance, when the matter was decided by a Division Bench of this Court in Special Civil Application No.403 of 1998 on 24th February 1998, i.e. a petition against the Reliance Petroleum Ltd. and the matter was taken to the Supreme Court, the moment the authorisation accorded by the Government was produced before the Supreme Court, the Supreme Court dismissed the SLP in view of the Government authorisation dated 30th November 1998 making it clear that by dismissing the SLP, the Supreme Court had not concluded that the judgment under challenge was correct and further that it will be open for the petitioner in that case to challenge the order dated 30th November 1998 in appropriate proceedings.

(2) Second time when the Division Bench of this Court decided Special Civil Applications Nos. 11251 of 1998 and 11271 of 1998 on 12th May 1999 and the matter was taken to the Supreme Court, the Supreme Court dismissed the SLP, the order reads: 'The Special Leave Petitions are dismissed'.

(3) As the position stands today, already four pipelines are there in existence in the same area; one is of Indian Oil

Corporation (IOC) for which the permission was granted even before the commencement of the Wild Life Protection Act; the other one is of Gujarat State Fertilizer Corpn. (GSFC), which too is said to be there before the commencement of the Act and the third one is of Reliance Petroleum Ltd., even after the commencement of the Act and the fourth one is again of IOC which was established in 1997, i.e. after the commencement of the Act.

(4) If the pipelines of Private Companies are already there in existence and the grant of authorisation in such cases such as Reliance Petroleum Ltd. when it was challenged before the High Court, the Court rejected it and the Supreme Court also declined to interfere with the High Court's orders with regard to the Private Companies, here is a case in which there is a Government to Government contract, i.e. between Govt. of India and the Sultanate of Oman and as has been narrated in the earlier part of the judgment, the agreement was arrived at between the Govt. of India and the Sultanate of Oman and it is on the basis of this agreement that this pipeline is sought to be laid. When the Private Companies have been permitted and the Supreme Court has declined to interfere in such cases, the present Company, i.e. Bharat Oman Refinery Ltd. (BORL) which is a collaboration of two Governments, why the authorisation granted should be interfered with?

(5) If this Joint Venture as a result of MOU between two Governments is not allowed to be materialised by judicial order by interfering with the authorisation granted by the Govt. it may have certain repercussions at international level and may adversely affect the economic prospects when the consideration of this project had commenced way back in 1995 and the matter has been cleared (rightly or wrongly) under more than one Acts.

51. For the reasons as aforesaid, we have of course declined to interfere in the facts of the present cases and the background in which the matters have gone under litigation, but at the same time, we leave to the wisdom of the respondent State Government to reconsider its decision in the light of this judgment as to whether they would still go ahead with the matters or would like to explore the alternative route of 'Mundra' for which the evaluation was not made as per the comparative statement of Vadinar, Mundra and Pipavav. During the course of arguments, we had called upon learned Counsel appearing on behalf of the State Government to inform us as to whether any more applications of this nature were pending before the Government and as to whether the Government was still inclined to grant any more authorisations and permissions for laying such pipelines - Mr.Tanna placed on record a copy of the letter dated 25th July 2000 sent to him by the Under Secretary to the Government along with a copy of the letter dated 8th September 1995 which was sent to the Secretary of Ministry of Environment and Forest, Govt. of India, by the Under Secretary, Forest & Environment Department, Govt. of Gujarat. We are simply bemoaned and shocked to know from this letter that there were two more proposals pending with the State Government; one from Essar Oil Ltd. and another from Gujarat Poshitra Port Ltd. and that for Essar Oil Ltd. the formal sanction under Section 29 of the Wild Life (Protection) Act, 1972 by the State Government was yet to be given and proposal of Gujarat Poshitra Port Ltd., is for creation of a Special Economic Zone (SEZ) at Okhamandal taluka of Jamnagar district and it has been mentioned in this letter that the stand of the Government is that both these proposals will be decided on merits. We may commend the able, tenacious and pursuasive arguments of Mr.Tanna, learned Counsel for the State and for his legal acumen but we can't desist ourselves from observing that we did not expect such an unreasonable and adament stand and attitude from a welfare State which claims to be committed to the cause of environment and protection of wild life and yet gives an evasive reply attempting to take the cause for a ride. Four pipelines are already in existence. The fifth one is the pipeline to be laid down by BORL for which the authorisation was granted in February 2000 and which is the subject matter of challenge in these petitions. Even on the principle of 'one time action' or 'minimum loss' etc. which have been pleaded throughout on behalf of the respondents, the area which is established as sanctuary/national park cannot be allowed to be a network of pipelines and therefore, we, in the facts and circumstances of these cases say that enough is enough and hereby restrain the

Government of Gujarat from granting any more authorisation and permission for laying down any pipeline in any part of the sanctuary or the national park and in case any applications as have been given out are pending, the same shall be decided keeping in view the interpretation of Section 29 of the Act as has been given in this order and in the light of what has been observed and held in this order.

52. In the result, all these Special Civil Applications are decided and allowed in part as above. Rule is made absolute accordingly. In the facts and circumstances of these cases, no order as to costs.

(M.R. Calla, J.)

(R.R. Tripathi, J.)

Sreeram.